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October Term 1981

IN THE

Supreme Court of the United States

RAMAH NAVAJO SCHOOL
BOARD, INC.
and
LEMBKE CONSTRUCTION CO., INC.,

Appellants,

V.

BUREAU OF REVENUE, STATE OF NEW MEXICO,

Appellee

ON APPEAL
FROM THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

JOINT APPENDIX

APPEAL DOCKETED JUNE 22, 1981
PROBABLE JURISDICTION NOTED
NOVEMBER 30, 1981

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Excerpts from Ramah Navajo School Appropriations Acts, Public Laws 93-120, 93-245, 93-404, 94-165, and 95-74 .....(J.S., p. 11 and 12)
Excerpts from 25 U.S.C. 2010, Public Law 95-561, Title XI, § 1130, November 1, 1978, 92 Stat. 2321 .....(J.S., p. 12)

Excerpts from Johnson O'Malley Act, 25 U.S.C. 452, April 16, 1934, c. 147, § 1, 48 Stat. 596; June 4, 1936, c. 490, 44 Stat. 1458 ..... (J.S., p. 12)
Excerpts from 25 U.S.C. 465, Act. of June 18, 1934, c. 576, § 5, 48 Stat. 985 ..... (J.S., p. 13)
25 U.S.C. §§ 261, 262 ..... (J.S., p. 13)
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RELEVANT DOCKET ENTRIES

DISTRICT COURT, STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT

No. CV-78-438

RAMAH NAVAJO SCHOOL BOARD, INC., AND LEMBKE CONSTRUCTION CO., INC.,
Plaintiffs,

vs.

BUREAU OF REVENUE, STATE OF NEW MEXICO
Defendants.

DATE	PROCEEDINGS
March 3, 1978	Complaint, Filed
April 11, 1978	Answer, Filed
July 6, 1978	Order
July 6, 1978	Amended Complaint, Filed
July 13, 1978	Defendant's Motion for Summary Judgment, Filed
July 19, 1978	Opposition to Motion for Sum mary Judgment, Filed
July 10, 1978	Stipulation (Filed in open Court) Document Stipulation (Filed in open Court)
August 17, 1978	Decision of the Court, Filed
September 6, 1978	Judgment, Filed
September 10, 1978	Notice of Appeal, Filed
April 3, 1981	Mandate, Filed (Affirmed)

April 19, 1981	Notice of Appeal, Filed
May 22, 1981	Amended Notice of Appeal and Proof of Service, Filed

RELEVANT DOCKET ENTRIES

COURT OF APPEALS OF NEW MEXICO

No. 4302

RAMAH NAVAJO SCHOOL BOARD, INC., AND LEMBKE CONSTRUCTION CO., INC.,
Plaintiffs-Appellants

vs.

BUREAU OF REVENUE, STATE OF NEW MEXICO,
Defendant-Appellee.

DATE	PROCEEDINGS
July 1, 1980	OPINION (Affirm) W-H2-A
July 3, 1980	MOTION for Rehearing
July 11, 1980	ORDER deny Motion for Rehearing
July 29, 1980	Notice of Certiorari
August 15, 1980	Supreme Court grant Certiorari
August 15, 1980	WRIT OF CERTIORARI
March 31, 1981	CERTIORARI QUASHED on 3/30/81

April 1, 1981	MANDATE (Opinion to West)
May 11, 1981	Notice of Appeal to U.S. Supreme Court
May 22, 1981	Amended Notice of Appeal to U.S. Supreme Court
July 10, 1981	Stipulation that exhibits be transmitted with Record to U.S. Supreme Court
July 24, 1981	Certification to Supreme Court

RELEVANT DOCKET ENTRIES

SUPREME COURT OF NEW MEXICO

No. 13,230

RAMAH NAVAJO SCHOOL BOARD, INC., AND LEMBKE CONSTRUCTION CO., INC.,
Petitioners,

vs.

BUREAU OF REVENUE, STATE OF NEW MEXICO,
Respondent.

DATE	PROCEEDINGS
July 24, 1980	Petition for Writ of Certiorari Notice to Court of Appeals
August 14, 1980	Order Granting Petition for Writ of Certiorari
December 23, 1980	Motion for Leave to File Amicus Brief and Participate in Oral Argument

February 5, 1981	Order Granting Motion to File Amicus Curiae Brief - 15 days to File
March 20, 1981	Amicus Curiae Brief - Navajo Tribe of Indians
March 30, 1981	Order Quashing Writ
May 11, 1981	Notice of Appeal to U.S. Supreme Court
May 14, 1981	Amended Certificate of Service

DISTRICT COURT, STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT

RAMAH NAVAJO SCHOOL BOARD, INC.
AND
LEMBKE CONSTRUCTION CO., INC.,
Plantiffs

vs.

No. SF-78-438

BUREAU OF REVENUE,
STATE OF NEW MEXICO
Defendants

TABLE OF EXHIBITS ADMITTED
INTO EVIDENCE
Plaintiff's Exhibits Admitted

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P-1	Original Art. of Incorp. and Bylaws, Ramah Navajo School Board, Inc.				
	By Stipulation at 36-38				**003**
P-1(a)	Title 10, Navajo Tribal Code §51				
	By Stipulation at 36-38				**368**
P-2	Res. of Navajo Tribal Council, No. CAU-87-69 (8-8-69) enacting Navajo Tribal Community School Board Act				
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P-3 Res. of Navajo Tribal Council _____ 0 71 (7-8-71) restructuring Executive Branch of Navajo Tribe and Establishing an Office of Navajo Education
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P-4 Res. of Navajo Tribal Council, No. _____ 07-73 (10-24-73) stating authority of Local Community School Boards including Ramah Navajo School Board
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P-6 Res. of Navajo Tribal Counsel No. CMA-11-76 (3-10-76) endorsing continued operation of certain contract school programs
36-38,78 81 83 369

P-7 Res. of Navajo Tribal Council No. CJN-24-76 (6-2-76) authorizing contracting under P.L. 93-638
36-38,78 81 83 371

P-8 Res. of Navajo Tribal Council CMY-38-77 (5-5-77) authorizing Council Committee on Federal Relations to approve P.L. 93-638 contract applications
36-38,78 81 83 410

P-9 Res. of Navajo Tribal Council Committee on Federal Relations No. FR-7-77 (6-6-77) recommending contract for BIA social services, employment assistance and housing programs by the Ramah Navajo Community
36-38,80 81 83 413

P-10 Res. of Navajo Tribal Council Committee on Federal Relations No. FR-38-78 (7-14-78) approv ing Ramah Navajo School Board's (and other) P.L. 93-638 school contracts
36-38,80 81 83 415

P-11 Res. of Navajo Tribal Council Committee on Federal Relations No. FR-79-79 (6-19-79), approving renewal of Ramah Navajo Soc. Services, employment assistance and housing contracts with BIA [cover letter not admitted, Tr. 83]
36-38,80 81 83 418

P-12 Testimony of Chavez Coho and Bertha Lorenzo for Ramah Navajo School Board, Inc. before Senate and House Interior and Related Agencies, Subcommittee on Appropriations (April 11 & 13, 1972) [admitted for limited purpose, Tr. 67]
By Stipulation at 36-38 420

P-21 Act of August 10, 1972, Public Law 92-369, 86 Stat. 508 (Interior Appropriations)
By Stipulation at 36-38 033

P-21(a) Act of October 4, 1973, Public Law 93-120, 87 Stat. 431 (Interior Appropriations)
By Stipulation at 36-38 036

P-22 Act of January 3, 1974, Public Law 93-245, 87 Stat. 1073 (Supplemental Interior Appropriations)
By Stipulation at 36-38 039

P-23 Act of August 31, 1974, Public Law 93-404, 88 Stat. 810 (Interior Appropriations)
By Stipulation 041 at 36-38

P-24 Act of December 23, 1975, Public Law 94-165, 89 Stat. 985 (Interior Appropriations)
By Stipulation 043 at 36-38

P-25 Act of July 26, 1977, Public Law 95-74, 91 Stat. 293 (Interior Appropriations)
By Stipulation 045 at 36-38

P26 Senate Report No. 95-276, 95th Congress, lst Sess. (1977) (Interior Appropriations)
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P-27 H.R. Report No. 95-461, 95th Congress, lst Sess. (1977) (Interior Appropriations)
36-38,90 81 83 336, 478

P-28 Contract between School Board and BIA for design of Ramah school facilities (10-20-72)
By Stipulation 048 at 36-38

P-29 Contract between School Board and BIA for construction of Ramah school (4-3-74)
By Stipulation 084 at 36-38

P-30 Contract between School Board and BIA for additional construction and furnishings for Ramah school (11-20-74)
By Stipulation 094 at 36-38

P-31 Contract between School Board and BIA for phase II construction of Ramah school (8-13-76)
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By Stipulation 119
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By Stipulation 155
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By Stipulation 169
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By Stipulation 229
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P-38 BIA-Ramah Contract for operation of local education program in Ramah Navajo Community (9-1-76)
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P-44(a) Ramah Navajo Chapter Res. No. RNC 4-77 (4-30-77), for contract of BIA social services, employment assistance and housing programs
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P-46 Ramah Navajo Chapter Res. No. M75-70-1A (2-6-70), establishing Ramah Navajo School Board
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P-47 Annual Report of School Finance Division State of New Mexico (1977-1978)
294 **295** **295** **[In book form]**

P-50 Handrawn map of Ramah Navajo Reservation Area
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Defendant's Exhibits Admitted

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D-A	Letter dated March 11, 1974, from Michael P. Gross to Robert A. Dudley	311	311	312	504, 505
D-C	Certificate Report on special school bus transportation survey made in the Ramah Navajo area and memorandum to State Board of Edcation from C. B. Lemon	186	186	186	*
D-F	Standard Subcontract Form between Lembke Construction Co. Inc. and John Turner Painting Inc.; non-taxable transaction certifcate and invoice	By Stipulation at 36-38			349-356
D-G	Standard Subcontract Form between Lembke Construction Co., Inc. and Levis Bros. Plumbing and Heating, Inc.; non-taxable transactions certificate; estimate; pay invoice	By Stipulation at 36-38			357-367
D-H	Standard Subcontract Form between Lembke Constuction Co. Inc., and Butler Sheet Metal Co. and invoice	By Stipulation at 36-38			368-373

*No page number assigned Exhibit D-C not included in bound volume when transmitted with the record.

D-I Standard Form of Material contract Lembke Inc. and Builder's Specialty Service, Inc., invoice
By Stipulation 373-374
at 36-38

D-J Standard Form of Material Contract between Lembke and W & W Steel Co.; non-taxable transaction certificate, invoice
By Stipulation 375-379
at 36-38

D-K Standard Form of Material Contract between Lembke Don J. Cummings, Co.Inc.; non-taxable transaction certificate, invoice
By Stipulation 380-383
at 36-38

D-L Standard Form of Material Contract between Lembke Showcase and Fixture Co., Inc.; non-taxable transaction certificate, invoice
By Stipulation 384-386
at 36-38

D-M Invoice from Rio Grande Steel Co. to Lembke for structural steel used in the construction of the Ramah Navajo School Facility
By Stipulation 387-388
at 36-38

D-N Copies of checks evidencing payment from Lembke to its subcontractors and material suppliers for work and materials for construction of the Ramah Navajo School facility
By Stipulation 389-392
at 36-38

D-3 Portion of the specifications for the Ramah Navajo School facility containing invitation for bids with the general conditions of the contract attached
By Stipulation 99-111
at 36-38

DISTRICT COURT, STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT

No. 78-438(c)
(Title omitted in printing)

ANSWER

Defendant Bureau of Revenue for its answer to the complaint, states as follows:

ANSWER TO COUNT I

First Defense

This Court lacks subject matter jurisdiction over a claim for refund by Plaintiff Ramah Navajo School Board, Inc. ("The Board"), because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count I.

Third Defense

Lembke Construction Co., Inc. lacks standing to assert the claim set forth in Count I.

Fourth Defense

1. Defendant denies the allegations of paragraph 1 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2. Defendant denies the allegations of paragraph 2 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. Defendant admits the allegations of paragraph 3, except that Defendant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegation that the facilities constructed by Lembke are on Navajo trust lands.

4. Defendant admits the allegations of paragraph 4.

5. Defendant denies the allegations of paragraph 5.

6. Defendant denies the allegations of paragraph 6 for

lack of knowledge or information sufficient to form a belief as to the truth thereof.

7. Defendant denies the allegations of paragraph 7 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

8. Defendant denies the allegations of paragraph 8.

9. Defendant admits the allegations of paragraph 9.

10. Defendant denies the allegations of paragraph 10 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11. Defendant admits the allegations of paragraph 11.

12. Defendant admits the allegations of paragraph 12, except that it denies that it owes either Plaintiff anything.

ANSWER TO COUNT 2

First Defense

This Court lacks subject matter jurisdiction over a claim for refund by the Board because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count 2.

Third Defense

Lembke Construction Co., Inc. lacks standing to assert the claim set forth in Count 2.

Fourth Defense

1. In response to the allegations of paragraph 13, Defendant incorporates all the defenses, denials and allegations of its response to Count I of the Complaint as though here fully rewritten at length.

2. Defendant denies the allegations of paragraph 14.

ANSWER TO COUNT 3

First Defense

This Court lacks subject matter jurisdiction over a claim

for refund by the Board because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count 3.

Third Defense

Lembke Construction Co., Inc. lacks standing to assert the claim set forth in Count 3.

Fourth Defense

1. In response to the allegations of paragraph 15, Defendant incorporates all the defenses, denials and allegations of its response to Count I of the Complaint as though here fully re-written at length.

2. Defendant denies the allegations of paragraph 16.

ANSWER TO COUNT 4

First Defense

This Court lacks subject matter jurisdiction over a claim for refund by the Board because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count 4.

Third Defense

1. In response to the allegations of paragraph 17, Defendant incorporates all the defenses, denials and allegations of its response to Count I of the Complaint as though here fully re-written at length.

2. Defendant denies the allegations of paragraph 18.

3. Defendant denies that Plaintiffs' paraphrase of §72-16A-14.9, N.M.S.A. 1953, as set forth in paragraph 19, is accurate. The text of that statute reads as follows:

"Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the United States or any agency or instrumentality thereof or the state

of New Mexico or any political subdivision thereof may be deducted from gross receipts. Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the governing body of any Indian tribe or Indian pueblo for use on Indian reservations or pueblo grants, may be deducted from gross receipts."

4. Defendant denies the allegations of paragraph 20.

ANSWER TO COUNT 5

First Defense

This Court lacks subject matter jurisdiction over a claim for refund by the Board because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count 5.

Third Defense

1. In response to the allegations of paragraph 21, Defendant incorporates all the defenses, denials and allegations set out in its response to Count I of the Complaint as though here fully rewritten at length.

2. Defendant denies the allegations of paragraph 22 for lack of knowledge or information

3. Defendant denies the allegations of paragraph 23.

4. Defendant denies the allegations of paragraph 24.

ANSWER TO COUNT 6

First Defense

This Court lacks subject matter jurisdiction over a claim for refund by the Board because the Board is not a taxpayer.

Second Defense

The Board lacks standing to assert the claim set forth in Count 6.

Third Defense

Count 6 fails to state a claim upon which relief can be granted.

Fourth Defense

1. In response to the allegations of paragraph 25, Defendant incorporates all the defenses, denials and allegations of its responses to Counts I through 5 as if here fully rewritten at length.

2. Defendant denies the allegations of paragraph 26.

WHEREFORE, Defendant prays that it may have judgment dismissing all counts of the complaint, awarding Defendant its costs herein expended, and granting such additional relief as the Court deems just and proper.

(Signature and certification
omitted in printing)

**IN THE DISTRICT COURT OF NEW MEXICO,
FIRST JUDICIAL DISTRICT**

No. 78-438(C)

(Title ommited in printing)

AMENDED COMPLAINT

COUNT I

Pursuant to §72-13-40(A)(2), N.M.S.A., 1953 Comp., Petitioners seek judgment from this Court for refund of

gross receipts taxes paid since 1974, under color of the Gross Receipts and Compensating Tax Act, §72-16A-1 through §72-16A-34, N.M.S.A., 1953 Comp., and allege and represent as follows:

1. Petitioner, Ramah Navajo School Board, Inc. (hereinafter School Board), is a non-profit New Mexico corporation controlled and operated by and for the benefit of Indians who are members of the Ramah Navajo Chapter, an arm of Navajo tribal government located on the Navajo Indian Reservation in Valencia and McKinley Counties, New Mexico.

2. The School Board is a tribal organization of the Navajo Nation as that term is used in 24 USC §450b, P.L. 93-638, The Indian Slef-Determination and Education Assistance Act. It operates programs and projects primarily in the field of education for the benefit of Navajo Indians within the borders of their reservation on land held in trust by the United States for the Navajo Nation.

3. Petitioner Lembke Construction Co., Inc. (hereinafter Lembke), is a New Mexico for-profit corporation engaged in the construction business. Since 1974, Lembke has been under contract to the School Board to construct a school complex and related facilities on Navajo trust lands in Valencia County, New Mexico.

4. Throughout its relationship with the School Board, Lembke has been paying and continues to pay New Mexico gross receipts taxes assessed and collected by Respondent who has imposed the tax on the receipts from this project under color of the New Mexico Gross Receipts and Compensating Act, §72-16A-1 through §72-16A-34, N.M.S.A., 1953 Comp. As of December 1, 1977, these tax payments have totalled $161,543.34, and said tax payments have continued since that date.

5. By agreement with the School Board and in accord

with common business practice in New Mexico, Lembke has passed on this tax to its customer, the School Board, which has thus sustained the entire financial and economic burden of the tax.

6. The School Board's construction project has been financed entirely by the federal government through Congressional appropriations earmarked for the Ramah Navajo School Board, Inc. under Public Laws 93-120, 93-245, 94-165, and 95-74. These funds are intended to improve educational opportunities for Indians and were appropriated in aid of the federal Indian self-determination policy embodied in 25 USC §450, et seq., P.L. 93-638.

7. In June, 1968, the State of New Mexico ceased operating a high school for the Ramah Navajo area. As a result, Ramah Navajo children were forced to attend distant federal boarding schools. When efforts, including a lawsuit, failed to reopen the closed public high school, Petitioner, Ramah Navajo School Board, Inc., was formed. It has been operating a school program for Ramah Navajo children ever since, using federal funds obtained through contracts with the Bureau of Indian Affairs. Its current building program (on which the gross receipts taxes have been paid) is essential to the continuation of this educational program.

8. Imposition of the Gross Receipts and Compensating Tax Act on the construction program conducted by the School Board has severely constricted that project and has deprived Navajo Indians of the Ramah Navajo Chapter the right to govern themselves effectively by providing adequate educational opportunities for their children. The tax constitutes interference by the State of New Mexico in Navajo self-government in violation of the Treaty of 1868 and the laws of the United States.

9. On December 12, 1977, Lembke filed a claim for re-

fund of gross receipts taxes paid Respondent on the Ramah Navajo school project. Lembke's claim was for $161,543, plus interest as provided by law.

10. By agreement with the School Board, any refund of taxes obtained by Lembke will be paid over to the School Board. In turn the School Board is required by its contracts with the federal government to apply any such refunds to its construction project.

11. On December 17, 1977, the School Board moved to intervene in Lembke's claim proceeding.

12. On February 7, 1978, Respondent denied Lembke's claims. A copy of this denial is attached to this petition. Because of this denial, Respondent owes to Petitioners the sum of $161,543 as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest.

WHEREFORE, Petitioners respectfully pray for judgment reversing the decision of the Respondent and awarding them $161,543, as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest, for costs of this action, and such further relief as to the Court seems just.

COUNT II

13. Petitioners incorporate the allegations of Count I by reference.

14. The imposition of the tax in question violates New Mexico's Constitutional disclaimer of jurisdiction over Indian lands. Const. Art. XXI, §2. Respondent therefore owes Petitioners, $161,543, as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest.

WHEREFORE, Petitioners respectfully pray for judgment reversing the decision of the Respondent and awarding them $161,543, as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest, for costs of this action, and such further relief as to the Court seems just.

COUNT III

15. Petitioners incorporate the allegations of Count I by reference.

16. The Supremacy Clause, U. S. Constitution Art. VI, §2, bars the imposition of this tax because its collection burdens or interferes with a clear federal policy and program for the education of Indian children. Respondent thus owes Petitioners $161,543, as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest.

WHEREFORE, Petitioners respectfully pray for judgment reversing the decision of the Respondent and awarding them $161,543, as of December 1, 1977, plus an additional amount for gross receipts taxes paid pursuant to the construction program subsequent to that date, and appropriate interest, for costs of this action, and such further relief as to the Court seems just.

COUNT IV

17. Petitioners incorporate the allegations of Count I by reference.

18. At all material times Lembke has acted and continues to act as the School Board's agent for the purchase of construction materials used in the construction project involved herein. In turn the School Board has acted as agent of the

United States or the Navajo Nation in carrying out this project.

19. Section 72-16A-14.9, N.M.S.A., 1953 Comp., grants a deduction for the sale of tangible personal property to an agency of the United States or any Indian tribe.

20. Petitioners are therefore entitled to refund of $80,000 representing that portion of gross receipts taxes on this project attributable to the cost of tangible personal property, i.e., construction materials, purchased by the School Board as agent of the United States or the Navajo Nation.

WHEREFORE, Petitioners respectfully pray for an Order reversing the decision of the Respondent and awarding them $80,000 plus interest, the costs of this action, and such further relief as to the Court seems just.

COUNT IV

17. Petitioners incorporate the allegations of Count I by reference.

18. At all material times Lembke has acted and continues to act as the School Board's agent for the purchase of construction material used in the construction project involved herein. In turn the School Board has acted as agent of the United States or the Navajo Nation in carrying out this project.

19. Section 72-16A-14.9, N.M.S.A., 1953 Comp., grants a deduction for the sale of tangible personal property to an agency of the United States or any Indian Tribe.

20. Petitioners are therefore entitled to refund of $80,000 representing that portion of gross receipts taxes on this project attributable to the cost of tangible personal property, i.e., construction materials, purchased by the School Board as agent of the United States or the Navajo Nation.

WHEREFORE, Petitioners respectfully pray for an Order reversing the decision of the Respondent and award-

ing them $80,000 plus interest, the costs of this action, and such further relief as to the Court seems just.

COUNT V

21. Petitioners incorporate the allegations of Count I by reference.

22. In addition to gross receipts taxes paid on actual construction work, the School Board has also paid its architects $24,000 since 1974, for gross receipts taxes which they, in turn, paid to Respondent under color of the Gross Receipts and Compensating Act, *supra,* as of December 1, 1977.

23. Imposition of said tax on architectural fees for this project also violates New Mexico's Constitutional disclaimer of jurisdiction, Art. XXI, §2, *supra;* interferes with federal Indian policy; and severely burdens Navajo tribal self-government, all in violation of the laws and Constitution of the United States.

24. The School Board is entitled to a refund of $24,000 plus interest for taxes paid by its architects and charged to the School Board.

WHEREFORE, Petitioner, Ramah Navajo School Board, Inc., prays for an Order reversing the decision of the Respondent and awarding its $24,000 plus interest, the costs of this action, and such further relief as to the Court seems just.

COUNT VI

25. Petitioners incorporate the allegations of Counts I through V by reference.

26. Petitioners are continuing to pay and have paid gross receipts taxes on the project in question during the pendency of this action and unless restrained, Respondent will continue to impose the New Mexico Gross Receipts and Compensating Tax Act, *supra,* on this project.

WHEREFORE, Petitioners further demand repayment

of all taxes which they may pay under color of the New Mexico Gross Receipts and Compensating Tax Act, *supra,* since November, 1977; pray for declaratory judgment under §22-6-4, et. seq., N.M.S.A., 1953 Comp., 1975 Supp., declaring that under the New Mexico Gross Receipts and Compensating Tax Act, Respondent lacks jurisdiction to enforce the Act, *supra,* upon the construction project which is the subject of this lawsuit; pray that the Court grant a permanent injunction enjoining Respondent from imposing any taxes under the New Mexico Gross Receipts and Compensating Tax Act, *supra,* upon proceeds received or payments made by either of the Petitioners in connection with the construction project which is the subject of this lawsuit; and, additionally, pray for such other relief, including costs, interest, and so on, as the Court deems proper. DATE: June 17, 1979

(Signatures omitted in printing)

Attachment to Amended Complaint

STATE OF NEW MEXICO
BUREAU OF REVENUE
Santa Fe, New Mexico

An Equal Opportunity Employer

February 7, 1978

Michael P. Gross, Esq.
Post Office Box 1447
40 Sena Plaza Santa Fe , New Mexico 87501

Lembke Construction Co., Inc.
Claim for Refund

Dear Mr. Gross:

As you of course know, we have received Lembke Construction Company's claim for refund and the informal discussion paper which you submitted at the time of the informal conference on January 6, 1978. We have also reviewed copies of Lembke's construction contracts submitted subsequent to the informal conference.

After consideration of the facts and arguments you have presented, Lembke Construction Co's claim for refund is denied. The gross receipts of a non-Indian contractor, such as Lembke, from performing construction services on a reservation in New Mexico are taxable. *Mescalero Apache Tribe v. O'Cheskey,* Case No. 76-171B D.N.M. Memorandum Opinion October 19, 1977, on appeal Tenth Circuit Court of Appeals No. 77-2103. See also *Prince v. Board of Education,* 88 N.M. 548, 543 P.2d 1176 (1976). If Lembke

Construction Co. Should decide to pursue its administrative remeday pursuant to §72-13-38, N.M.S.A. 1953, Ramah Navajo School Board, Inc.'s motion to intervene will then be considered. There is no need to rule on that motion at this time.

IN THE DISTRICT COURT OF NEW MEXICO,
FIRST JUDICIAL DISTRICT
No. 78-438(C)

STATE OF NEW MEXICO COUNTY OF SANTA FE

IN THE DISTRICT COURT

RAMAH NAVAJO SCHOOL BOARD, INC., et al.,
Plaintiffs,

-vs- No. SF 78-438

BUREAU OF REVENUE, STATE OF NEW MEXICO,

Defendant.

ORDER

This matter having come on before this court upon the motion of the Plaintiffs to amend their Complaint to provide for additional gross receipt tax payments between the time the original computation was made and the present; this Court having considered the motion and being appraised in the premises,

IT IS, THEREFORE, ORDERED:

1. That the Plaintiffs be, and hereby are, permitted to file an Amended Complaint, a copy of which is attached hereto and incorporated herein as Exhibit "A", but that such must be filed within five days from the entry of this Order.

2. That the Defendant's Answer to the original Complaint be, and hereby is, applied to and considered as the Answer to the Amended Complaint.

/s/
DISTRICT JUDGE

(ATTORNEYS' SIGNATURES OMITTED IN PRINTING)

IN THE DISTRICT COURT OF NEW MEXICO,
FIRST JUDICIAL DISTRICT

No. 78-438 (C)

Stipulation of Facts

(Title ommited in printing)

STIPULATION

Plaintiffs Ramah Navajo School Board, Inc., hereinafter referred to as School Board and Lembke Construction Company, hereinafter referred to as Lembke; and Defendant State of New Mexico, Bureau of Revenue, hereinafter referred to as Bureau of Revenue, by their respective attorneys hereby stipulate as follows:

1. Ramah Navajo School Board, Inc., is a non-profit corporation incorporated under the New Mexico Non-profit

Corporation Act, §53-8-1, et seq. NMSA 1978. All members of the corporation are members of the Ramah Navajo Chapter. Ramah Navajo Chapter is a local unit of Navajo Tribal Government located on the Ramah Navajo Indian Reservation in Valencia and McKinley Counties, New Mexico.

2. The School Board's affairs are managed by a Board of Trustees. The members of the Board are elected by the Ramah Navajo Chapter. Only members of the Ramah Navajo Chapter are eligible to be members of the Corporation or members of the Board of Directors. The School Board operates programs and projects primarily in the field of education for the benefit of Ramah Navajo Indians located on the Ramah Navajo Reservation. The Reservation is one of three satellite reservations in New Mexico to the Navajo Indian Reservation proper. It is located approximately thirty-five miles southeast of Gallup, New Mexico, and it is the home of a group of Navajos whose ancestors settled the region many years prior the Long Walk of 1868.

3. The School Board is a Navajo "tribal organization" within the meaning of 25 U.S.C. §450b(c), for purposes of entering into contracts with or receiving grants from the Bureau of Indian Affairs.

4. In 1973, the Bureau of Indian Affairs contracted with the School Board for the design of new school facilities, and, in 1974, contracted with the School Board for actual construction of school facilities, pursuant to specific congressional appropriations solicited by and made to the Ramah Navajo School Board.

5. All the money with which the Ramah Navajo School facilities were constructed and continue to be constructed with came from the federal government through specific congressional appropriations to the School Board under P.L. 92-369, P.L. 93-120, P.L. 93-245, P.L. 93-404, P.L.

94-165, and P.L. 95-74. In order to obtain these appropriations, members of the School Board testified before Congress on many occasions to justify their need for these monies. Navajo Tribal monies were not used to construct the new school facilities.

6. The Navajo Tribe, acting through its tribal council, has authorized and continues to authorize the School Board to contract with the Bureau of Indian Affairs, pursuant to P.L. 93-638 for monies to operate the Ramah Navajo School facilities.

7. The new educational facilities are located exclusively on Navajo trust land leased to the School Board for educational uses and purposes. The contracts between the Bureau of Indian Affairs and the School Board designate the Ramah Navajo School Board as the design and building contractor. The initial contract for construction vests title to the educational facilities in the School Board.

8. Since 1974, Lembke, a non-Indian entity, has been under subcontract with the School Board to construct a school complex and related facilities in fulfillment of the School Board's obligations to the United States under its contracts with the Bureau of Indian Affairs.

9. The construction contracts between Lembke and the School Board require that Lembke pay New Mexico taxes required by law. Section 4.6.1 of the general conditions of the contract.

10. Throughout its relationship with the School Board, Lembke has been paying and continues to pay New Mexico gross receipts tax to the Bureau of Revenue on its receipts from the school construction project. Lembke's bids or cost estimates have always included the tax as a part of the cost to the School Board.

11. There were two bidders for construction of this pro

ject, both of which included New Mexico gross receipts tax in their bids.

12. Section 1Y of the general requirements attached to the invitation for bids for the Ramah Navajo School construction project informs bidders that they must compl with New Mexico "sales and use tax laws."

3. The School Board has no direct liability to the Bureau of Revenue for gross receipts taxes arising from the construction of the Ramah School facilities. However, pursuant to its agreement with Lembke, Lembke has passed on this tax to the School Board, which has thus sustained the financial burden of the tax.

14. Defendant's exhibits F through N, attached to the affidavit of Jan Unna filed in support of Defendant's Motion for Summary Judgment, represent typical subcontracts, materials contracts, invoices, non-taxable transaction certificates, and payments to materials suppliers and subcontractors of Lembke Construction Company for the Ramah School construction project. These documents represent the typical manner in which materials were purchased, invoiced and paid for by Lembke on the Ramah School construction project. The procedures reflected in these documents for the Ramah School project represent the standard practice of Lembke in handling these matters in other construction projects which occur off of any Indian reservation.

15. To date, Lembke Construction Company has paid the Bureau of Revenue the total sum of $232,264.38 on its gross receipts derived from the construction of educational facilities for the School Board, all of which payments have been reimbursed by the School Board from the federal funds allocated to this project under the congressional appropriations mentioned in Stipulation No. 5.

16. Lembke has agreed to repay the School Board any rebate or recovery it realizes as a result of this action.

17. In the contracts between Lembke and the School Board, Lembke was not expressly designated an "agent" for any purposes.

18. Plaintiff Lembke Construction Company has exhausted its administrative remedies. Architects/Engineers West and Hirschen, Gammill, Trumbo and Cook are not parties to the suit and have not exhausted their administrative remedies.

19. Education is one of several functions of Navajo Tribal government. Other typical functions of Navajo tribal government include such areas as: law enforcement and police power; road construction, repair and maintenance; economic development; housing; resources management; health care; and social welfare.

20. Approximately 450 Ramah Navajos attend the Pine Hill Schools, operated by the School Board for students in grades Kindergarten through 12. Approximately 35 Ramah Navajos attend Zuni High School at Zuni, New Mexico. Zuni High School is part of the New Mexico public school system operated by the Gallup-McKinley County school system. The State of New Mexico Education Department provides bus service solely within McKinley County for those students from Ramah Village to Zuni High School and back.

(Signatures of Attorneys omitted in printing)

(Signature omitted in printing)

DISTRICT COURT, STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT

No. CV-78-438

RAMA NAVAJO SCHOOL BOARD, INC., AND LEMBKE CONSTRUCTION CO., INC.,
Plaintiffs.

vs.

BUREAU OF REVENUE, STATE OF NEW MEXICO
Defendants.

Excerpts From Testimony on July 20, and 23, 1979 at Santa Fe, New Mexico

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[Tr. 42]

LARRY MANUELITO

was called as a witness and after first having been duly sworn, testified upon his oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. GROSS:

Q. Would you please state your name.

A. Yes. My name is Larry Manuelito and I am a Navajo.

Q. What is your occupation, please?

A. I am in private business right now in the construction.

Q. Are you a building contractor?

[Tr. 43]

A. Yes. I am.

* * * *

[Tr. 45]

* * * *

Q. Step back a minute. You said you were in the construction business. How did you get into the construction business as a practical matter?

A. I became interested in the construction business through my involvement with the Ramah Navajo School Board. I was an employee with the Ramah Navajo School Board for a number of years and then served as an executive director and in that capacity had responsibility, since the School Board was given the responsibility to manage the construction job. Ramah had very close contacts with the contractor on the job and was involved in the initial negotiations of those contracts.

* * * *

[Tr. 47]

* * * *

Q. Are you familiar with general business practice in the construction industry regarding this tax?

A. Yes.

Q. Can you tell us whether or not — How contractors generally in this state handle the gross receipts tax?

A. Well, they pass that cost on to the clients.

* * * *

Q. Can you state whether you know of any circumstances involving construction in New Mexico where a contractor did not pass on this tax to his owner or his contracting partner on the other end?

A. Not at this point, no.

Q. You don't know of any cases?

A. No.

[Tr. 48]

Q. So as far as you know, it is a general practice?

A. Yes. It is a general practice because — I am new in the business and that is what is my understanding that that is the general practice.

Q. Do you include the taxes [sic, i.e. tax as] part of your bid in the work that you bid in?

A. Yes.

* * * *

Q. As a preliminary matter, Larry, will you please tell the Court where the construction site that we are talking about is located.

A. Yes. It is located on the Valencia County site of the Ramah Navajo Reservation; approximately sixteen miles south of Highway 53. About seven miles south,

[Tr. 49]

more south than west of Grants, New Mexico.

* * * *

[Tr. 57]

BY MR: GROSS

Q. The School Board went to Washington to solicit funds for the construction, correct?

A. Yes.

Q. Were you familar with the form in which Congress acted? In other words, what mechanism did they pass a law?

A. Yes. After committing [sic, i.e. comittee] hearings, then they decided whether the request is warranted, then they passed a law and it is included in federal law as to how much money is appropriated for the request and Ramah's case was 2.7 million dollars. The only change of that legislation was an

amendment to the original bill that appropriated those funds and that was language that provided direct funding from Congress to the Ramah Navajo School Board, by-passing the Bureau of Indian Affairs.

[Tr. 58]

Q. Those facilities are all on Navajo trust land?

A. Yes.

Q. How does that work? The School Board leases the land from the tribe?

A. Yes. The School Tribe [sic, i.e., Board] received a lease from the Navajo Tribe for — I don't know. For those purposes.

* * * *

[Tr.60]

Q. I hand you documents which have already been stipulated fully and admitted into evidence in this matter. P-21(A) and P-22. Will you look at those.

A. Yes. This public law 93-120 was the original law that was passed that included the appropriations for Ramah Navajo School Board.

Q. What is the other document?

A. The other document is an amendment that included the special language that made it possible for Congress to directly fund the Ramah Navajo School Board.

Q. Did you have any help from any members of the Congressional Delegation in obtaining that special language?

A. Yes. The late Senator Montoya was very influential in the appropriations; also the change of language. In fact, he was the one that introduced or requested the change of language so the School Board could receive funds directly.

Q. In what manner did Senator Montoya help you? In other words, what did he do?

A. He worked very hard in the committee that he was involved with in introducing and supporting the Ramah School Board's request for these educational funds. Many times, over the objections of the

[Tr. 61]

Bureau of Indian Affairs.

* * * *

[Tr. 62]

Q. What is the document?

A. It was a request made by Senator Montoya on behalf of the Ramah Navajo School Board to allow a change of language. To amend the change of language in the original appropriation because there was fear that the Bureau of Indian Affairs, if they got the money, would establish their own priority and it was a very strong possibility, based on practices in the past that the BIA would use these funds elsewhere. It was for that reason that the Ramah Navajo School Board requested Senator Montoya to allow funds to go directly to the Ramah Navajo School Board so the Bureau of Indian Affairs could not use it elsewhere. This is a letter that was requested of Senator [sic, i.e. Bible] Balboa who was then in the subcommittee for the appropriations of this senate.

* * * *

Q. Can you characterize generally speaking what the Ramah Navajo School Board's position was at the time you were director, and now, if you know, concerning the relationship it has or had with the Navajo Tribe and the BIA?

A. The Ramah Navajo School Board has alway held excellent relationship with the Navajo Tribe and as far as I know, they still do. The relationship that the Ramah Navajo School Board had with the Bureau of Indian Affairs the early years is not good because the Bureau of Indian Affairs objected to the operation of the school and was, again, because of these objections, that the School Board had to go directly to Congress to bypass the Bureau of Indian Affairs

* * * *

[Tr. 72]

* * * *

Q. Has Ramah Navajo Chapter at any time attempted to disassociate itself from the Navajo Tribe?

A. No. Ramah Navajo Chapter is a sub — Our community government of the Navajo Tribe for that particular community, and they have the representative in the Navajo Tribal Council.

Q. What is the relationship between the chapter and the Ramah Navajo School Board Incorporated?

A. The chapter authorized and set up the Ramah Navajo School Board, then the Ramah Navajo School Board is an agent of the chapter.

Q. What was the purpose for setting up the Ramah Navajo School Board by the chapter?

A. At that time it was felt that because of the federal law that was in existence, that there was a requirement that there had to be an incorporated body and the initial problems and needs in that community happened to be education so they formed a school board.

* * * *

[Tr. 76]

* * * *

BY MR. GROSS:

Q. You said you were familiar, I believe, with prior dealings with the Navajo Tribe as Director of Ramah with the Navajo tribal government, is that true?

A. Yes, I am.

Q. Does the Navajo Tribe have any particular interest in any particular field of governmental functions?

A. Yes, they have major interests and one of them is education. They have a division of education with responsibility to set up equivalent to a State Department of Education, Division of Education of the Navajo Reservation.

* * * *

[Tr. 83]

* * * *

BY MR. GROSS:

Q. What was the relationship between the Ramah Navajo School Board and the BIA during the

[Tr. 84]

construction phases of this school regarding payments of money by the Bureau to Ramah?

A. Once the initial hurdle of convincing the Congress that the need was there for an educational facility, the BIA was required to work with the Ramah School Board to assist them in any way possible to help them in the various programs except for the first appropriation. The Ramah Navajo School Board administered those funds; set up a trust account and informed the Bureau of Indian Affairs of its payments and copies of those payments were sent to the BIA.

Q. Did the Bureau of Indian Affairs exercise any approval authority of any kind with regard to subcontractors?

A. No, they did not.

Q. Did you at any time inform the Bureau of your relationship with Lembke Construction Company?

A. Yes, we did. We requested bids for the first phase of that construction. There were two bidders and they were both way over the amount of money that was available and we selected the lowest one and negotiated a contract award with them and upon the award of the contract, we informed the Bureau of Indian Affairs that Lembke was our

[Tr. 85]

contractor.

Q. Did the Bureau at any time inform you of any objections it had to your contracting with Lembke Construction Company?

A. They did not, nor did they do it in regards to the architect's contract.

* * * *

[Tr. 87]

* * * *

Q. Do you recall the Phase III construction appropriation for Ramah?

A. Yes.

Q. Approximately what year did that occur?

A. I believe it was 1977.

Q. Is this the last of the construction phases at Ramah that you are aware of?

A. Since I have left, I don't know whether there has

[Tr. 88]

been any more since then, but there wasn't any more when I left.

Q. Were there any special circumstances involved in that appropriation in respect to Congress' attitude towards Indian construction?

A. Yes. There was a big uproar in Congress about misapplication of construction plans and the shoddy construction that was happening out on the Indian reservations, using federal funds and people that were attacked at that time was the Bureau of Indian Affairs who had the responsibility for all school construction across the United States for Indian Schools. Because of that, we had to go back and convince Congress that this particular project at Ramah was different and that it was approved by Congress and that we administered that construction ourselves and that it was not like the Bureau of Indian Affairs construction. In fact, Congressman Mertha [sic, i.e. Murtha] from Pennsylvania, on our invitation, came out to Ramah and visited the community and also visited other institutions that were constructed by the BIA and it was his report to the committee that made it possible for Ramah Navajo School Board to receive another appropriation to continue the construction program at Ramah for

[Tr. 89]

specifically the library.

Q. Are you aware whether any other school got money that year to build, or any other funding for school construction?

A. There was only one other school and the reason I know of it is because they testified for the committee right after us.

Q. I will hand you Document P-26 and ask you to identify it.

A. This is an appropriation bill.
Q. Is it a bill?
A. The Department of Interior, related agency appropriation Bill 1978. It is a report on that bill.
Q. Is Ramah mentioned in that report?
A. Under 19, Ramah High School constructional [sic, i.e., instructional] media center is mentioned in the amount of two million sixty-two thousand dollars.
Q. What is the relationship between this report and the facts you have just told us about concerning Congress' actions with regard to Ramah that year?
A. This was done — Ramah was one of two schools that was allowed and there was no other government schools that were allowed funding that year and the only reason why we were allowed is because we had

[Tr. 90]

convinced the Congress and the Committee that Ramah School, the project was handled properly and that it was operated by the Ramah Navajo School Board and not by the Bureau of Indian Affairs.

* * * *

[Tr. 94]

* * * *

CROSS-EXAMINATION

BY MR. RICHARDSON:

* * * *

[Tr. 95]

* * * *

Q. You also testified that you are on the Indian Affairs Commission, is that right?
A. Yes.
Q. This Indian Affairs Commission serves the Indian

population in the State of New Mexico, is that correct?

A. Yes, it does.

Q. It performs services of some sort for them?

A. It assists the various Indian groups in their efforts to deal with State government.

A. [sic, i.e. Q] Does the Indian Affairs Commission have a budget or appropriation from State monies?

A. Yes, they do.

Q. And do you get any per diem for the time or your travel to and from Indian Affairs Commission?

A. I am just like any commission members. I am

[Tr. 96]

reimbursed for mileage from whereever [sic] I go. Usually, it is no more than a day.

Q. So I assume that this reimbursement you get is out of the budget of the Indian Affairs Commission?

A. I assume that is where it is coming from.

Q. So in effect, you do serve — This Indian Affairs Commission is providing some services to the Indian from the State, isn't it?

A. Not in terms of direct services, no. Just in terms of because the State doesn't understand the problems of the Indian people or how to go about dealing with various Indian communities. In that sense, we serve as a buffer or we advise on certain things.

Q. You don't think that is of any benefit to Indians?

A. It is of benefit to the Indians primarily because if Indian people didn't call for representation in some way within the State, there would be no benefit, I would think. In fact —

Q. It is of some benefit to Indians, isn't it?

A. I imagine so, yes.

Q. You seem to be somewhat familiar with Indian education in this State, is that correct?

A. Yes, I am.

Q. Isn't it true that the State has a duty to educate

[Tr. 97]

all citizens within its borders; Indian, non-Indian alike? Right of free public education for them?

A. Yes. That's true.

* * * *

[Tr. 103]

* * * *

Q. Going back to the gross receipts tax, when you first negotiated the contracts with Lembke, the School Board understood that that gross receipt tax was going to be the cost of having the project

[Tr. 104]

built, didn't they?

A. Yes.

Q. They understood that from the outset?

A. Yes.

Q. All the money that has been used to construct the Ramah school facilities, that was all money appropriated to the School Board, by federal congressional appropriations, is that right?

A. Yes.

Q. No tribal funds have gone into constructing that school, isn't that right?

A. Right.

Q. It is also operated under grant money that comes through the Bureau of Indian Affairs, isn't that true?

A. Yes.

Q. The Ramah Navajo School Board is a nonprofit corporation?

A. Yes.

Q. It is incorporated under the laws of the State of New Mexico, isn't that correct?

A. Yes, it is.

Q. It was authorized by the Ramah Chapter of the Navajo Tribe, isn't that right? The creation of the School Board?

[Tr. 105]

A. Yes, it was.

Q. Was there a consultation with the Navajo Tribe and the tribal council before the school board was created?

A. Yes, there was.

Q. You testified that the Navajo Tribe had an interest in education of their people, isn't that right?

A. Yes.

Q. They have an interest in lots of areas, don't they? Like providing good health care for their people, providing roads?

A. Yes.

Q. Providing police protection?

A. Yes.

Q. So they have got a lot of different interests in the welfare of the people?

A. Yes.

Q. They try to protect the natural resources in the tribe?

A. Yes.

Q. They try to raise money for programs for the tribe?

A. Yes.

Q. So education is just one of those tribal concerns?

A. Yes. Education is the biggest concern.

Q. You think it is the largest concern of the tribe?

[Tr. 106]

A. Yes, it is, because before you can have anything else, you have to have your people educated.

* * * *

[Tr. 108]

* * * *

A. During the negotiations which I was involved in with the Ramah Navajo School Board in the absence of Public Law 93-638, the Congress inserted special language to allow the money to go directly from Congress to the School Board and in effect allow the School Board to take the place of the Bureau of Indian Affairs facilities in engineering what prior to this particular project was handled by the

[Tr. 109]

facilities engineering people, the BIA themselves. What 93-638 did was to transfer former responsibilities to Indians for Indians to run so they can have the direct relationship with the United States government. So what we in effect did in not just this contract, but all of the other contracts, is we took the place of the Ramah Navajo agents [sic, i.e., agency]. In fact, we contracted the majority of the programs there. That is how I base my —

Q. Is there any language in those contracts —

* * * *

A. I can quickly look through it, but I don't know whether there is anywhere in there where it says that is an agent. In our discussions and negotiations with the government, this is the first time that a contract of this sort was being done with any Indian

group. We took the place of the BIA's facility engineering people.

Q. Does the School Board get anything like textbooks or anything like that from the State of New Mexico?

A. During the time I was there we didn't. I don't know whether they do now or not.

[Tr. 113]

* * * *

Q. You agreed earlier that the State had an obligation to provide a free education for all the citizens in this State, both Indian and non-Indian. Are you aware, there are Indian students that go to State institutions, aren't there?

A. Yes.

Q. There are Indian students in higher educational institutions that are public in New Mexico? For instance, like the University of New Mexico.

[Tr. 114]

A. Yes.

Q. In fact, the Indians get other types of benefits too, don't they? Like, isn't State Road 53 maintained by the State?

A. Yes, it is.

Q. You drive over State Road 53 every time you go to Ramah, don't you?

A. Yes.

Q. And other Ramah Navajos on there, I assume, drive over State Road 53 also?

A. Yes.

Q. There are other indirect benefits that Indians have from the State of New Mexico such as the fact that you are allowed to sue in State court for this action, isn't that right?

A. Yes.
Q. There is law enforcement protection provided?
A. Not on our reservation.
Q. Your Navajo State Police are trained in the State Police Academy, aren't they?
A. They also pay for their training.
Q. But they are also trained at that academy, aren't they?
A. I assume.

* * * *

[Tr. 115]

REDIRECT EXAMINATION

MR. GROSS:

* * * *

Q. Larry, does the State of New Mexico public school system operate the school buses or provide any form of local schooling for the majority of Ramah Navajo children at Ramah?
A. There are no State school buses for educational facilities on the Ramah Navajo Reservation.

* * * *

[Tr. 116]

* * * *

Q. Why did the Ramah Navajo School Board choose to incorporate?

[Tr. 117]

A. Because there was no Public Law 93-638 and there was a requirement by the United States government that in order for an organization like this to conduct business directly with the government, that you had to be incorporated and it was only for that reason that the School Board became incorporated.
Q. Have you any idea as to how many Ramah Navajos,

and if so, how many went to college before the creation of the Ramah Navajo School Board?

A. Yes. I am aware of only, I think, one or two, out of that community of two or approximately four years that has a college degree.

Q. Approximately how many have matriculated into college since the creation of the Ramah Navajo School Board?

A. I would say fifty or sixty.

Q. Did the Ramah Navajo School Board construction program - was it necessary to cut back the Ramah Navajo school construction program in any way because of this tax?

A. It cost us 4 1/4% and whatever that 4 1/4% would buy, that would be how much the School Board would be losing.

* * * *

[Tr. 118]

* * * *

Q. Are you aware whether there is a separately contained cafeteria at the Ramah Navajo School site at Pine Hill?

A. There isn't, no.

A. Are there enough classrooms to conduct the programs of the School Board?

A. No, because when I was there, we had a number of portable classrooms. In fact, high school facilities which was meant for classrooms partially is being used as a cafeteria.

Q. Is there any permanent structure that serves as an administration building?

A. No, there is only a portable building.

Q. Has the construction on the site been completed?

A. No, it has not.

[Tr. 119]

Q. Could any one or more of these items have been built at the time or now if this tax money had not had to be paid to the State of New Mexico?

A. I think at the time it could have built a lot because of — Right now, I'm not sure how much that amount of money would buy.

* * * *

Q. So agency, BIA Agency at Ramah, which you referred

[Tr. 120[

to, that means the local BIA Office?

A. Yes.

Q. Just to nail it down, you are saying that the Ramah Navajo School Board his in effect taken over the functions of that agency?

A. It has taken over 90% of the functions of the agency.

* * * *

[Tr. 121]

* * * *

RECROSS EXAMINATION

BY MR. RICHARDSON:

* * * *

Q. Before you actually got the construction money to start building your school, Ramah Navajo School Board operated the school and some facilities that were in the town of Ramah, is that correct?

A. Yes.

Q. Although these facilities weren't what you wanted and weren't large enough for what you wanted to do, you were still operating your own school, is that correct?

A. We operate our own school in that facility which

[Tr. 122]

we had to pay to renovate because it was condemned.

Q. But that was from federal money you got from Congress, wasn't it?

A. Yes. No, those monies were not from Congress. Those monies to renovate those old buildings came from the Tribe.

Q. Then construction started in what? Approximately 1974?

A. Somewhere around there. I am not --

Q. When was the first year you held school in your new facilities?

A. '75, I believe.

Q. And you have been holding school in those facilities ever since then, haven't you?

A. Yes.

Q. You have been running your own program to educate those people in your own school facilities since '75, haven't you?

A. Yes.

Q. The fact that you had less money because of the gross receipts tax did not prevent you from providing some level of education, did it?

A. No. We had to use our imagination.

Q. But you did provide some level of education, didn't you?

[Tr. 123]

A. Yes.

Q. When the first bids came in on the first phase of construction, there was a lot less - or the bid came in a lot higher than you had expected, isn't that correct?

A. Yes.

Q. So additions [sic, i.e., decisions] had to be made as

to where you were going to cut back - as to what was going to be built, isn't that right?

A. Yes.

Q. Then eventually, because you couldn't build everything you planned to in the first phase, you went to Congress and you got more money and you built your gymnasium with that extra money, isn't that right?

A. Yes.

Q. So the fact that the amount of buildings you could build with your first money for Congress was substantially lower than what you planned, was largely the fault of the fact that the architect had over estimated what could be built with the amount of money you were going to get, isn't that right?

A. I guess you could say that. Consistent with all other projects in the reservation.

[Tr. 124]

Q. Also inflation was a factor in not being able to build as much as you wanted to? Didn't things cost more than when you originally planned them?

A. I imagine they did, yes.

Q. So there were other factors other than the gross receipts tax that affected what you built, weren't there? In fact, the amount of money that would have been involved in this first phase contracts in terms of the 4 1/2% or 4 1/4% gross receipts tax wasn't two hundred thousand, but it was less than that, wasn't it?

A. I don't recall how much it was.

Q. Assuming that the amount of gross receipts taxes that have been paid by Lembke at this point in time are two hundred thirty two thousand after the

Phase I contract, that wouldn't have been nearly that much, would it?

A. I have no idea.

Q. Do you know how much the Phase I contract was, don't you?

A. Yes.

Q. 2.7 million and 4% of that is less than two hundred thousand dollars, isn't it?

A. 4% of 2.7 million? I guess that would be.

Q. Because of the fact that you didn't have the money,

[Tr. 125]

couldn't build as many buildings as you wanted to, meant you had to cut back on what buildings you were going to build and there was not a particular building that you can say we couldn't build simply because of the tax, is there?

A. Yes. What was projected, not because of the tax, no.

Q. It was because of all these factors, right?

A. Right.

Q. In fact, there is a cafeteria that is operating right now at Ramah School, isn't there?

A. Yes. A makeshift one.

Q. It is in an enclosed building, isn't it?

A. Yes.

Q. It is operating, isn't it?

A. Yes.

Q. Hot meals are being served from it?

A. Yes.

Q. Kids are getting hot meals from it?

A. Yes.

Q. The fact that it is not in a separate building doesn't make it a cafeteria, does it?

A. No. It takes twice as long to serve.

Q. But there is a cafeteria there, isn't there?

A. Yes.

[Tr. 126]

Q. There is an administration building, is there not?

A. Yes. Portable.

Q. But it still serves the function of an administration building? Adminstration activities are functioned there, aren't they?

A. Yes.

Q. The buildings there aren't permanent ones, but they still serve as a classroom, aren't they?

A. Yes.

Q. They still derive the same function as a building that is permanently affixed to the ground, can't it?

A. Yes.

Q. I have no further questions.

* * * *

[Tr. 128]

* * * *

NEIL ULLERY

was called as a witness and after first having been duly sworn, testified upon his oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. VAN AMBERG:

* * * *

Q. Mr. Ullery, what is your occupation?

A. I am Secretary-Treasurer and Controller of Lembke Construction Company, Incorporated.

Q. Is Lembke Construction Company, Incorporated one of the Plaintiffs in this matter?

A. Yes, sir.

THE COURT: Mr. Ullery, in respect to Lembke Construction Company, is that a New Mexico

[Tr. 129]

corporation?

A. Yes, sir.

THE COURT: Does it have its principal place of business in New Mexico?

A. Albuquerque, yes, sir.

Q. Mr. Ullery, what is Lembke Construction Company's primary business or function?

A. Commercial buildings, general contractor.

* * * *

Q. Mr. Ullery, Lembke Construction Company built the Ramah School facility to the extent it exists which is the subject of this litigation?

A. Yes, sir.

Q. Sort of recapping the stipulations, Lembke Construction Company, in preparation of its bid, included gross receipts tax in that bid?

A. Yes, sir.

[Tr. 130]

Q. Then it passed these gross receipts tax on to Ramah for payment?

A. Yes, sir.

Q. Is this the passing of gross receipts tax unto [sic] a client from a general contractor a usual custom in the business, in the contracting business within the state, to your knowledge?

A. Yes, sir.

Q. Why is it that gross receipts taxes are traditionally passed on to the client in the contracting business?

A. If we didn't, we couldn't sustain our operation because year in and year out, our margin of profit is less than gross receipts tax. Secondly, or probably first, the specifications for the job require that the

contractor include in his bid all exiting [sic] applicable taxes of any nature whatso ever.

* * * *

[Tr. 133]

* * * *

Q. Would you have contracted with Ramah to build the school on basically the same terms and conditions that you have contracted for in the past if Ramah

[Tr. 134]

had refused to indemnify you for tax, for gross receipts tax?

A. Well, sir, it is our interpretation that we are responsible for paying gross receipts tax on our receipts. That is a necessary business expense which we intend, certainly, to recoop from our business operations. We are not financially able to take that out of some store room that we might have and then pay it. We don't have that kind of money. We treat gross receipt tax as that figure, whatever it might be, as additional costs that we are going to be obligated in this contract. To us a dollar spent on gross receipt tax is the same as a dollar spent on lumber or materials or labor that goes into the building. It probably should be classified as an overhead expense as opposed to a labor and material expense, but nevertheless, it does exist and is a part of our total cost.

* * * *

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Ullery, how many years have you been in the general contracting business?

A. Myself?

[Tr. 135]

Q. Yes, sir.

A. Approximately nine years.

Q. So you are very familiar with how that business operates, I assume?

A. Well, I like to think so, but I have new things come up every once in a while.

Q. On the Ramah project, you figured in the gross receipts tax on the bids because the bidding documents instructed you to do so, isn't that correct?

A. Yes, sir.

Q. In fact, you probably figure gross receipts tax in any bid that you submit, didn't you?

A. Yes, sir.

* * * *

[Tr. 136]

* * * *

Q. Even though it may not have been itemized in the Phase I contract bids, were you aware of whether or not the School Board was aware that the gross receipts tax was one of those costs involved in your bid?

A. Well, I can't really say what the School Board was aware of. But I do believe that they were certainly aware of what the architect put on in the specifications. The specifications point blank said the general contractor will include New Mexico gross

[Tr. 137]

receipts tax.

* * * *

[Tr. 140]

* * * *

THE COURT: Well, for clarification for the

Court, Mr. Ullery, I would like to know; one, what your general practice and custom is in that regard.

A. We pass it on to the customer.

THE COURT: Secondly, what specifically was done in this particular case with Ramah School Board?

A. It was passed on to them. They paid it and then we in turn paid the Bureau of Revenue.

Q. You stated that Lembke is not in the business of selling materials. Did you mean that in the sense that you are not a retailer in materials, people don't walk in off the street and buy them?

A. That's right.

Q. But in effect, when you build a project, somebody is just not buying — Well, they are buying the entire project. In other words, if they are having to build a school, they are buying the entire school, which means they are buying materials and you in effect are buying those materials and incorporating them into the school. So you did sell those materials, didn't you?

A. Well, in that sense, yes. But I think the original question was did we sell them retail.

[Tr. 141]

Q. But that is what you meant by your answer when you said no, that you don't sell them retail? You only sell them as you incorporate them into the construction project that you build?

A. Yes, sir.

Q. And you do in fact make some markup on your materials because that is part of the cost that you take your percentage markup on, isn't it?

A. Yes, sir.

Q. So you do make some money when you handle materials?

A. Hopefully, yes, sir. It is our intent.

* * * *

[Tr. 144]

* * * *

Q. So, in other words, the way you handle the materials purchased in the Ramah School Project was not any different then would have been on the project performed for non-Indians on non-Indian property then?

A. That's right.

* * * *

[Tr. 160]

* * * *

REDIRECT EXAMINATION

BY MR. VAN AMBERG:

[Tr. 166]

* * * *

THE COURT: That's what I am not clear on. On the purchase of particular items, did you pass on a gross receipts tax as to the cost of those items or materials to the school district?

A. Not specifically on that item. But whether [sic, i.e., whenever]that item became a component part of the building and as such increased the value and increased our cost, then there was a 4% added on to the bottom of it or the percentage, the applicable percentage. It wasn't always 4%.

Let me put it another way. The sale from the supplier to the general contractor is not taxable.

[Tr. 167]

Therefore, our costs of the material is just that. It is the cost of the material. There is no tax on it but

when we then incorporate it into the project and bill the owner and the owner pays us, then it becomes part of our total receipts upon which the law says we will pay the gross receipts tax. But back to the original transaction of the material coming from the material supply man to the general contractor, there is no tax.

THE COURT: Thank you. I have no further questions.

* * * *

[Tr. 189]

* * * *

CHAVEZ COHO

was called as a witness and after first having been duly sworn, testified upon his oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. GROSS:

Q. What is your name, please?

[Tr. 190]

A. My name is Chavez Coho.

* * * *

Q. What is your occupation? What do you do for a living?

A. Well, I have a stock, sheep and cattle, and I used to be the tribal councilman and also School Board President.

Q. How [sic, ie. how long] were you councilman for Ramah?

A. Thirty years.

Q. For the Navajo Tribe?

A. Yes.

* * * *

[Tr. 191]

Q. You are and enrolled member of Navajo Tribe, I take it?

A. Right.

Q. How long have you been on the Ramah Navajo School Board?

A. Past nine years.

Q. Does that correspond with the existence of the school board?

A. Right.

Q. Ever since the beginning, you have been on the school board?

A. Right.

Q. Before I go on, Mr. Coho, let me say this; if you have any trouble understanding my questions or those of anyone else, would you please say so and we will see if we can have an interpreter.

Do you feel you can continue to give testimony in English?

A. Sometime I mix up some words. I don't understand - I am not be to school, I just learn a few words.

Q. Mr. Coho, tell a little bit about what it was like to grow up in Ramah and why you did not go to school.

A. Well, why I have not been to school is there is no school in those years. Ever since fourth grandfather or grandmother requests a school for their children. All the communities never be to school. This is the reason that I never be to school. There was no school nearby the community.

Q. Did other people from the Ramah Navajo Community attend school in your generation; people as old as you?

A. Some, yes.

Q. Where did they go to school for the most part?
A. Over at Albuquerque Indian School. Some over here at the Santa Fe Indian School.
Q. There was no local school?
A. No local school.

* * * *

[Tr. 198]

* * * *

MR. GROSS: Mr. Coho, how important is the subject of education to the Navajo Tribe Council that you serve on?
A. Well, it is much important.
Q. Is it more important than certain other functions?
A. Right. Well, especially for the new generation.
Q. Mr. Coho, what effect has a [sic] tax that is the subject of this lawsuit had on the Ramah Navajo's School Board's ability to provide adequate facilities for your programs?
A. Well, earlier, when we requested to fill [sic, i.e., build] the buildings, we need more; but, you know, we don't have enough monies. If we would have this money, we would have more buildings to be built. Right now, our cafeteria is very small. This is not for the cafeteria, but it is used for the kitchen now. The kitchen should be separated from the school.
Q. What facilities do you think are needed that have not yet been built in order to have the kind of

[Tr. 199]

facilities you think you need?
A. Well, we need dormitory and other buildings.
Q. Is there any need for more classrooms?
A. Right.
A. [sic, i.e. Q] Is there any overcrowding at the pre-

sent time of students in the high school building or the elementary school?

A. Yes. In the high school.

MR. VAN AMBERG: [sic, i.e., MR GROSS] I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Coho, you testified that when you were growing up, you didn't go to school. There were BIA boarding schools available at that time, weren't there?

A. Not in our community.

Q. But you could have gone somewhere else to go to school, couldn't you? To a boarding school somewhere?

A. Well, it is already filled what has been told by the BIA. That's the only place, Albuquerque Indian School. It is filled and also the —

Q. Did you try to go to the Albuquerque Indian School [Tr. 200]

when you were a child?

A. No.

Q. There were some people who did go to this Indian boarding schools, weren't there?

A. Some, yes.

* * * *

Q. In fact, all of the buildings there, the whole [Tr. 201]

school facility, was built entirely with federal money, wasn't it?

A. Right.

Q. And tribal money wasn't used to construct that school?

A. No.

Q. When you got the first appropriations from Congress, you had certain plans about how much you were going to build with that money, didn't you?

A. Right.

Q. And then when the bids came in, you found you couldn't build nearly as much as you thought you could, isn't that true? There wasn't enough money to build as many buildings as you had planned?

* * * *

A. Yes. We not have enough money for what I request.

[Tr. 202]

It is more but we got less monies.

Q. When you found out you didn't have enough money to build all the buildings you needed during that phase, didn't you go to Congress and get another appropriation to build a gymnasium?

Then you went to Congress more times and got more money to do more buildings, isn't that right?

A. Right.

Q. Actually, the School Board started operating schools for the Navajo students there in Ramah in 1970, even before they had no facilities, didn't they? Didn't they use the facilities in the town of Ramah that they rented for a while?

A. You mean at the time the old school was being reopened? That is what you are talking about?

Q. Right. Yes.

A. Yes. We leased the old school building that was owned by the Ramah Community.

Q. So really the School Board has been educating local Navajo children ever since 1970, haven't they?

A. Yes, started. Yes.

Q. And they were doing that even before they were able to build their own school facilities?

A. You say even before?

[Tr. 203]

Q. Even before they built their own school, they were providing education to Ramahs in that school that they are renting in the town?

A. Well, there is a public school at that time running by the McKinley County School Board and also the State from Santa Fe.

Q. I am talking about after that school was closed about 1970, before you started construction of your new school, when the school board rented facilities in the town of Ramah to start its own school.

A. Yes. We have been working at the same time to reopen the old school on the side. We request to build new school in our community.

Q. But even when you had to use the old school, you were still providing education to the local Navajo children, weren't you?

A. Right.

Q. Then when you started building your new school facilities, you didn't build every building that you now have the first years, did you?

A. No.

Q. So it took a couple of years to get everything built?

A. Right.

Q. But you still started educating students in the

[Tr. 204]

meantime, didn't you?

A. Right.

Q. You say that the school board would like to build more buildings, dormitories, cafeterias, classrooms and all of that?

A. Yes.

Q. You have a cafeteria right now, don't you?

A. No. This kitchen we have now is not built for the kitchen. That is for the classroom.

Q. But it is being used for the kitchen and meals are served there, aren't there?

A. Right. Because there is no building.

Q. It is not a separate building but it is still operating as a cafeteria, isn't it?

A. Right. In the school building.

A. [sic, i.e., Q] You have kids going to school in some portable classrooms right now because you don't have permanent ones to take care of them, right?

Q. But they are still getting their education in those portable ones, aren't they?

[Tr. 204]

A. Right.

Q. Do you think you could build a dormitory, a cafeteria, more classrooms, with two hundred thousand dollars?

A. No. Not enough.

[Tr. 205]

Q. You said that education is a very important concern for the Navajos.

A. Yes.

Q. Aren't there other tribal functions that are important too? Like managing your natural resources, there is money for operate its programs, is that important?

A. Yes. First the peoples have to do their educating or get in some job, then they go to other kind of jobs.

Q. Isn't it important that the tribe have money to have some of these programs, though?

A. Right now, the tribes do not have enough monies for all their peoples.

Q. Then isn't it important that they develop ways to make money, like building tribal enterprises that will provide jobs and also make money for the tribe?

A. Yes. If the job is in the community, it helps.

Q. So if the Navajo developed an industry where they could employ their own people and provide jobs and the industry also brought in money to the tribe, it would be a real good thing for the tribe, wouldn't it?

A. Yes

* * * *

[Tr. 207]

REDIRECT EXAMINATION

BY MR. GROSS:

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[Tr. 208]

Q. Did you plan, when you opened your school in 1970, did you plan to use that abondoned facility in Ramah Village for very long?

A. Yes.

Q. Did you understand my question?

A. Well, the way I got you is that do we plan to take old building to reopen the school.

Q. I am asking you, was it the School Board's intention to stay there very long?

A. No. It is only four years.

Q. What was your plan?

A. Well, our plan is to build new school in our community or supposed to be.

Q. This lawsuit concerns some two hundred thirty-two thousand dollars in tax money that the School

Board paid to Lembke Construction Company which in turn paid the money to the State. Do you think that this two hundred and thirty-two thousand dollars, if you got it now, would significantly help provide more facilities of the type that you said you needed?

A. Yes. I believe so. Some year would be filled up. [Tr. 210]

* * * *

ANN SMITH

was called as a witness and after first having been duly sworn, testified upon her oath as follows, towit:

DIRECT EXAMINATION

BY MR. GROSS:

Q. Would you tell us your name?

A. Ann Smith.

Q. Where do you reside?

A. Santa Fe.

Q. What is your occupation?

A. Anthropologist.

Q. How long have you been an anthropologist?

A. Since the 1930's.

Q. What is your educational background?

A. I took my undergraduate work at Cornel University and got a M.A. and Ph.D at Yale University.

Q. Have you written any books or monographs or articles in the field of anthropology?

A. I have and I have in probably the last part of the work I was doing, I was primarily concerned with cross cultural education.

Q. Have you at any time made studies of Indian education in New Mexico?

A. In 1966, '67, the University of New Mexico asked me

[Tr. 211]

to do a study of Indian education in New Mexico for the Department of Government and Political Science there which I did and which they printed.

Q. Have you kept up with the field of Indian Education in New Mexico since that time?

A. I have indeed. I was very involved in the whole struggle of the Ramah people to secure their own school. At the present time, I am a member of the New Mexico Commission on Indian Affairs and a member of the three member at Hope [sic, i.e., ad hoc] Committee on Education of the Commission. The other two members, a Navajo and a Pueblo.

* * * *

[Tr. 218]

* * * *

Q. What is the importantance [sic] in terms of quality education for indians in the concept of community control?

A. It is terribly important because unless they have some control over the education of their children, they are not going to get any better education than they are today. If we are ever going to have the level of income, of health, of opportunity raised for our Indian children, it looks to me as though we are going to have to have the Indians in

[Tr. 219]

control of schools, because the anglos have failed dismally.

Q. You are familiar with the Indian Self-Determination Policy, are you not?

A. Yes, I am.

Q. What would you say in terms of your past estimate

concerning the rightness or wrongness of that policy?

A. Well, I think it is definitely right. I mean, Indians have as much right as any of the rest of us to have control over our future destiny and the destiny of our children. The destiny of our children and our ability to survive and live in this world depends on the kind of education they get.

[Tr. 221]

* * * *

Q. Is there a connection in your view between education and the self-government of Indians?

A. Of course. You can't have self-government, unless you have informed and educated citizenry and you can't have efficient self-government or good self-government without that. I think it terribly important that the Indians, and particularly the Navajos, because of their large numbers and their widely scattered areas, that it is very important that their Indians should be educated and they feel that education is more important than anything else.

* * * *

[Tr. 224]

* * * *

Q. Doctor Smith, are educational facilities important in any way to the quality of education programs conducted in them?

A. I certainly think they are. I compare the old Ramah Navajo High School with the new Pine Hill point. It was very difficult to conduct class in rooms where the rain was leaking through the roof and there were no adequate facilities. Now, Pine Hills is a very different matter, and I am sure, I know that the educational proceedings going on there are

much superior because of the better facilities. You also need more room, more facilities, more books, more teaching tools, so the money is an important part.

Q. In your studies of education, have you taken this kind of economic factors in account in terms of facilities in particular?

A. Yes, I have indeed. I can tell you where the best schools and the worst schools are in New Mexico. Those that have Indian children.

Q. Would the lack of sufficient numbers of classrooms have an adverse effect in your opinion on the ability of the Ramah Navajo School Board to conduct a sound educational program?

[Tr. 225]

A. Very definitely, because that limits the number. I think that more classrooms you are able to have a smaller teacher-student ratio and that also makes for better education.

Q. If I told you as a hypothetical that there were not enough classrooms at the new facility at Pine Hill, would you have an opinion, and if so, what is it as to the effect of the loss of two hundred thirty-two thousand dollars on the ability of Navajo Indian Tribe to make its own laws and be governed by them?

A. Well, I think it would certainly have an effect on the education of the children because if you have too many children in a classroom, you cannot do as good teaching as you can if you have a smaller number of pupils per teacher. Therefore, and I don't know how many classrooms you could build with that today, but I think the more the merrier, the better for the children.

Q. What about the same question in respect to an adequate cafeteria?

A. The same thing.

Q. What about in relationship to an adequate school administration building?

A. I think that is very important.

[Tr. 226]

Q. What about the same question in relationship to adequate landscaping and site planning at a school facility?

A. Well, they always help. All we have to do is look at our own high school here in Santa Fe to see how important it is or how important the lack of it is.

Q. I have no further questions.

CROSS-EXAMINATION

BY MR. RICHARDSON:

Q. You were just talking about the importance of adequate classrooms and this sort of thing for quality of education. Do you think there is a significant difference in the quality of education that can be derived in a portable classroom as opposed to one that is affixed to the ground providing the same size and space?

A. I haven't had enough experience visiting portable classrooms to really make an adequate judgment on that point. I would say from the teacher's point of view, particularly, it would be very difficult, I would think, to teach in a portable classroom.

Q. Have you seen any of the portable classrooms out at Ramah?

[Tr. 227]

A. There was one out there before they moved to Pine Hill, wasn't there? I remember one. We have had them here. I was for three years a member of the

committee, a member of the parent's advisory committee for the Follow Through Program, so I am familiar with the use of portable classrooms here in Santa Fe for low income children who are in the Follow Through Program. I know teachers did not feel that they really could do as good a job in the portable classrooms.

Q. Have you seen the school administration building out at Ramah?

A. The new administration building?

Q. The administration building that is being used at Ramah?

A. I haven't been there since the dedication in 1975. Not to the new building.

Q. When the dedication in 1975 occurred, was the administration building a portable tin building?

A. I don't remember. I don't think I saw it. We were all so busy looking at the classrooms and the buildings and there were many, many people there that day. I don't recall seeing the administrative headquarters at all.

Q. Do I understand your testimony to be that better

[Tr. 228]

education would be obtained for the Indian School if they didn't [sic, i.e. did] have a cafeteria building?

A. Well, I think all children need to be fed and fed well.

Q. If you have a cafeteria but it is not a big cafeteria so you have to stagger the lunch hours, do you think that would affect the quality of education in the school?

A. I think everything in the school environment should

be part of the child's education and it is and it can affect them, either adversely or favorably.

Q. So a paved parking lot is a big influence on education?

A. There is a big problem out at Pine Hills, isn't it?

Q. Would you answer my question?

A. Well, I really hadn't thought about it.

Q. Well, take your time and think about it and answer it, please.

A. It would apply only, of course, to older students-wouldn't it - who had cars or drove faculty cars.

Q. You are saying that every aspect of a school facility significantly affects the quality of education and some schools have paved parking lots and some don't.

A. Let's put paved parking lots down at the bottom of

[Tr. 229]

the list, can't we?

Q. So some things don't have a very significant affect on the quality of education, do they?

A. Some things have more; some things have less.

Q. So it is all very qualitative, isn't it?

A. No, it is a matter of priorities, the most important thing, down to the minimally important things.

Q. Do you think the Pine Hill School down at Ramah is a good school?

A. I think it is great.

Q. And a good quality of education is being provided there now?

A. I do.

Q. I believe you testified that the Navajos are very good [sic, i.e. poor] people?

A. Economically, yes.

Q. And economic development is something that

would be very desirable for the tribe in order to provide for a better standard of living for their people, wouldn't it?

A. It would, providing it doesn't ruin their land.

Q. So economic development is also an important aspect of tribal self-government, isn't it?

A. Of course.

[Tr. 230]

Q. There are other aspects of tribal self government which are important to the quality of life for the people such as police protection and having good roads and having good health care services, being able to provide social welfare services, all of those are important aspects of self-government, aren't they?

A. Yes. If you are going to have self-government operated by the Navajo, you are going to have to have educated Navajos.

Q. I believe you testified there were approximately twenty-five thousand Indians in the public?

A. Those figures we got from the State Department of Education of New Mexico.

* * * *

* * * *

Q. Are you aware that school buses now run between Ramah and Zuni High School?

A. Between the town of Ramah?

Q. Yes.

A. Yes. But that's a paved road all the way, isn't

[Tr. 232]

it?

Q. I believe so.

* * * *

REDIRECT EXAMINATION

BY MR. GROSS:

[Tr. 234]

* * * *

Q. What I am trying to get at is this, are you aware that there are other governmental functions being performed by the Ramah Navajo School Board in addition to education?

A. Well, they are all members of the Ramah Navajo Chapter, are they not, and as thus part of the total Navajo tribal government.

Q. Yes.

A. Yes.

Q. But are you aware there is a clinic at the school site?

A. No, I do not know about the clinic.

Q. You do not know about it? Ramah lacked a school until this one was built, at least there is no debate about that. Was this lack of a school within the Ramah Navajo Community in any way part of this national policy of dissimulation [sic, i.e., assimilation] that you were referring to before?

A. I think so because when they closed that small school that did exist at Ramah, the families had to choose between sending their children away to boarding school, sometimes hundreds of miles away, or let them drop out of school. I think this is a tragic choice for a family to have to

[Tr. 235]

make because those children who were sent away to school lived in a completely different environment, completely different culture, and the attitude was shape up and get rid of all those Indian ways of thinking and doing and being and I think it was

very detrimental to the children who went away to boarding school.

* * * *

[Tr 237]

* * * *

THE COURT: Doctor Smith, I have a few questions.

Does the State of New Mexico provide any assistance or materials to the Pine Hill School?

A. In the public schools, I think they do. At Ramah I believe they do not. Is that correct, Mr. —

THE COURT: You can't ask somebody else. I am just asking you; if you don't know —

A. I don't think they do in Ramah; I don't think they get the money which is available for school lunches, for textbooks, things of that kind which do go to Indian children in our public schools.

THE COURT: Do you feel definitely one way or the other whether the State does provide any of those materials or assistance?

A. For the Ramah School?

THE COURT: Yes.

A. I think it does not.

THE COURT: Do you know whether they get textbooks or any part of that?

A. They do not get textbooks and this has surprised me because I have always understood that the fees for grazing land in the State from the federal government went to provide our free textbooks for the State public schools, but I don't believe Ramah gets free textbooks.

THE COURT: Do they get any assistance for school lunches or —

A. I don't believe so. Not from the State.

THE COURT: What about visual aids or other materials other than textbooks?

A. That I couldn't speak specifically of.

THE COURT: Do you know whether the State Department of Education expends any expertise or assistance, technical assistance?

A. I don't know what they do now, but when we were trying to get Ramah School started, we asked and asked for techinical [sic] assistance and advice but we got turned down.

THE COURT: I have no further questions.

* * * *

[Tr. 239]

RE-DIRECT EXAMINATION

Q. Dr. Smith, what was the State's Department of Education attitude towards the creation of the Ramah Navajo School in 1970?

A. It was extremely antagonistic, I felt so. I wrote several letters to the paper about it.

Q. Would you please elaborate on that. What was the genesis of the hostility and what happened?

A. Well, just about the time the school opened, the Superintendent of Public Instruction announced that he would sue any parents who sent their children there because it was not an accredited school and as the Ramah School Board had tried over and over again and had responded to every question that the Superintendent of Public Instruction wanted about curriculum, about faculty qualifications, so on and so forth. It had an approved plan of curriculum, so on and so forth and the Superintendent of Public Instruction made very rigid requirements. One, that all teacher aids

who are going to help with teaching in Navajo language and Navajo culture, Navajo crafts, that they all have a high school education. Well, as the educational level in the Ramah was three years

[Tr. 240]

of schooling, this was not possible. So this threat, this empty threat, I may say, by the superintendent of public instruction frightened many parents. Then I think the faculty and the school board had worked to plan a basketball team which is very important to teenagers and had set up a schedule of games. Two days before the first game was to take place, the Superintendent of Public Instruction said that no accredited school could play Ramah because it was not accredited and we had that kind of obstruction time after time, conference after conference, but we did not get - the school board had asked the State Department of Education to send someone over to help them learn what the School Board could do, how they could do it, they never got any help from the State Department of Education at all.

Q. How do you know all this?

A. I was there. I went to a lot of School Board meetings.

Q. Were you in attendance at any meetings between the Ramah Navajo School Board and the Superintendent of Public Instruction?

A. Yes, I was indeed.

Q. What were the circumstances of that meeting?

[Tr. 241]

A. To try and iron out some of these difficulties and get the approval which would enable the school to

provide things for the students such as a basketball schedule.

Q. Did the approval eventual come?

A. I think it did, but years later.

Q. Are you familiar with whether any political support was necessary from high above in order to help get the approval?

A. I think there was.

Q. I have no further questions.

THE COURT: Thank you, Mrs. Smith.

* * * *

[Tr. 241]

* * * *

JOHN C. MARTIN

was called as a witness and after first having been duly sworn, testified upon his oath as follows, to-wit:

DIRECT EXAMINATION

[Tr. 242]

BY MR. GROSS:

Your Honor, before the witness begins his testimony, I would like to explain that Mr. Martin has been in the courtroom for many of the proceedings up until now but by agreement with Counsel for the Defendant, we have permission to proceed.

Q. Would you please state your name.

A. My name is John C. Martin.

Q. Where do you live?

A. I live at Pine Hill; Ramah, New Mexico.

Q. Are you a member of any Indian tribe?

A. I am a member of the Navajo Tribe.

Q. Are you employed?

A. I am employed by the Ramah Navajo School Board.
Q. In what capacity?
A. I am the executive Deputy Director which is assistant to the executive director under Ramah Navajo School Board.
Q. How long have you been in that capacity?
A. I am fairly recent in this position; about a little over a month and one-half.
A. [sic, i.e. Q] Are you familiar with the programs of the Ramah Navajo School Board?
A. Yes.

* * * *

[Tr. 248]

* * * *

Q. You talked about the school board having a budget of about 7.2 million dollars; is this money in the budget all federal money? Does it come from the federal government?
A. No.
Q. Was the composition of that money — Where does it come from?
A. Like I said, the Ramah Navajo School Board, as an incorporated body, is able to do many things such as it can be an agency to apply for grants. We have grants that go into this budget. Grants such as through HEW, bilingual program is through a grant and so forth.
Q. But that grant money isn't that federal grant money?
A. [sic, i.e. Q] Yes. Is there any money in the 7.2 million budget that is not federal money? That comes from the sources other than the United States government or federal agencies?

A. If there is, there is very little that comes from the tribe, the Navajo Tribal government.

Q. Almost all of it, then, in other words, comes from the federal government, isn't that right?

[Tr. 249]

A. Yes, sir.

Q. In fact, you don't know if any comes from the tribe, do you?

A. Yes. The scholarship money comes from the tribe.

Q. Is there anything else that comes from the tribe?

A. I can't say offhand.

Q. How much money is the scholarship program? Do you know?

A. I can't give you a figure on that.

Q. Do you have any approximation?

A. I would say about a hundred thousand.

Q. A hundred thousand dollars a year?

A. Yes.

Q. I have no further questions.

THE COURT: Mr. Martin, I have just a few questions.

To your knowledge, does the State of New Mexico provide any materials or technical assistance in any way to the school?

A. No, sir.

* * * *

[Tr. 250]

CAROLYN LINDBERG

was called as a witness and after first having been duly sworn, testified upon her oath as follows, to-wit:

* * * *

DIRECT EXAMINATION

BY MR. RICHARDSON:

[Tr. 266]

* * * *

THE COURT: Counsel, I am going to recognize Mrs. Lindberg as an expert in the field of economics and in the field of State Taxation and Revenue and physical expenditures. I would note that Rule 702 of the Rules of Evidence, that an expert may testify to matters within his or her field of expertise if they are relevant to the issues of the case and if there are matters which an expert in that particular area customarily relates upon in arriving at their professional opinion.

BY MR. RICHARDSON:

[Tr. 267]

Q. Mrs. Lindberg, did you make a study of State Expenditures on behalf of Ramah Indians?

A. Yes.

Q. Did you arrive at a conclusion as to whether there were any state expenditures on behalf of Ramah Indians?

A. Yes. There definitely are State expenditures on Ramah Indians.

* * * *

BY MR. RICHARDSON:

Q. Were there categories of State expenditures on Ramah Indians?

A. Yes. The categories were the direct expenditures who [sic] were for the benefit of Ramah Indians and then there were indirect expenditures who [sic] were for the benefit of all of Ramahs, for the citizens.

* * * *

[Tr. 269]

* * * *

Q. Are there any areas of State expenditure on behalf of the Ramah Navajo Indians that you discovered in the process of making a study on the State expenditures on Ramah Navajo Indians?

A. Yes. I found a number of areas, public and higher education was one notable area. The second major area in terms of dollar value of services rendered was exactly in the taxation area, in the rebate program, close to forty-five thousand dollars roughly to individual Ramah Indians and that is a figure that will rise substantially next year when we have our forty dollar per head food tax exemption rebate.

* * * *

Q. Speaking first of public education, how did you [Tr. 270]
derive your figures you arrived at for public education?

* * * *

A. The expenditure figures were derived from the annual report of the Public School Finance Division. There was a computation made in terms of the per-pupil expenditures applied to the number of students that we could determine attended the public school at Zuni from the Ramah Reservation.

Q. What was your source of information as to how many Ramah Navajo students attended public schools?

A. I spoke to Charlie Johnson at the Zuni School.

Q. Who is Mr. Johnson?

[Tr. 271]

A. He is the principal.

* * * *

Q. Are you aware of other Ramah students attending public schools other than at Zuni High School?

MR. VANAMBERG: Objection, your Honor, unless there is some foundation made as to the source of her awareness.

THE COURT: If you know of your own personal knowledge as distinguished from speculation --

A. No, I don't.

Q. Did you attempt to call every public high school in the state and determine whether they had any Ramah Navajo students?

* * * *

[Tr. 272]

* * * *

A. Can I say what I did do?

THE COURT: Yes.

A. I attempted to determine the bus route from Ramah which goes to the Zuni school, so the presumption on my part was that that is where they went if they went to public school.

Q. Did you inquire of other public schools to see if there were Ramah indians going there?

A. No.

Q. Do you recall what benefits you determined, what direct benefits you determined were derived by Ramah Navajo people from public education in lower level schools, secondary schools and below?

A. The students in question-seventh through twelfth graders, and I determined that on an average per pupil basis, roughly thirty thousand dollars would be the measurement of the benefits.

THE COURT: I don't understand your last

statement. Are you talking about thirty thousand dollars per year per pupil?

A. Yes, I'm sorry, Your Honor. Yes. No, not per pupil.

THE COURT: Can you explain your last state-

[Tr. 273]

ment?

A. Yes. By calculating the average expenditure of State funds on students in that school district, I simply multiplied that by the number of Ramah students.

THE COURT: What did you determine?

A. The total came to roughly thirty thousand dollars annually.

THE COURT: For all the students?

A. For all the students, yes.

Q. Did you investigate expenditures on behalf of Ramah Indians in the field of higher education in the State of New Mexico?

A. Yes, I did. I contacted the tribe on two occasions and received no information from them. I was able to obtain from the Board of Educational Finance a determination that there are three students who graduated from Ramah High School currently attending higher education institutions of the State of New Mexico.

However, I was not able to find out how many Ramah students from other high schools were attending institutions of higher education. The Board of Educational Finance statistics are in terms of origin, high school origin for the students.

[Tr. 274]

Q. Based on that information, were you able to arrive

at an approximation of how much State expenditure was involved in educating those two Ramah students?

A. Yes. For those three students, again based on average State general fund appropriations per student at the institutions in question, I calculated the value to be about five thousand for those three students for a single academic years.

Q. I believe you stated the information you had came from the information on record as to students graduating from Ramah High School, is that correct?

A. That's correct.

Q. So no part of the sum you have calculated would involve Ramah Indians who might have graduated from other high schools, is that correct?

A. No. They are not included.

Q. Did you find any evidence of State expenditure in the field of criminal defense of indigent Navajo Indians?

A. Yes, I did. In that case, the Public Defender's Office has three attorneys under contract to handle indigent cases for them in McKinley and Valencia County. These three attorneys were asked by the Public Defender's Office to review their records to determine the number of hours spent defending [Tr. 275]

these cases and the one thousand dollar estimate service value is based on their records.

* * * *

[Tr. 276]

BY MR. RICHARDSON:

Q. Did you determine any State expenditures in the

area of public assistance on behalf of Ramah Navajo Indians.

A. Yes, I did. In this case, I went directly to the welfare office and viewed the welfare roles myself. I must add that in that case they do not denote ethnic origin on the roles. I was able to determine how many cases were from the Ramah zip code area. Some of them may not have been Indian. In most cases, you would have to go by names and I recognize what the difficulty there is. I found about forty-eight cases on the roles in September and October and I based an estimate of State funds involved in that case on annualizing the number of cases for those two sample ones. I then deducted the amount that is federal matched - The federal government matches, I think it is about seventy-eight percent or so, then they reimburse the State for part of its match. I took all the federal funds out and left only the State contribution on those cases and the total came out to be, I think it was five or six thousand dollars.

Q. Did you include all the recipients that had a Ramah zip code in that case?

[Tr. 277]

A. In that case I did.

Q. Did you discover any State expenditures in the area of tax rebates?

A. Yes. In that case, of course, we had access to our own department computer records and we actually did a dump on the low income tax rebate paid to — Again it was a zip code sort to that particular zip code for low income tax rebates and also for the medical rebate and using the number of exemptions that were reported under the medical rebate,

we multiplied by thirty dollars to get the 30 30 rebate. In that case, because the dollars were quite large, I reduced it by fifteen percent as a rough guess correction for the people who would not be Ramahs.

Q. Do you recall approximately the level of expenditure?

A. All three of those together came to about forty-five thousand but I don't recall the components.

Q. All three? Are you speaking —

A. Low income, the medical and the 30 30 rebate, the three major rebate programs.

Q. What year was that for?

A. That, unfortunately, was for 1976. We have had some well publicized trouble with our '77 returns and subsequently, we cannot get as good access to

[Tr. 278]

computer read-outs for that year. I would say that specially in view of the fact that we are raising the per exemption rebate to forty dollars, that is not a misleading picture of the rebate. In fact, it is probably conservative.

Q. Did you discover any State expenditures for the Office of Indian Affairs?

A. Yes. In that particular case, State budget for the Office of Indian Affairs physical [sic, i.e., fiscal] year is about $84,000.00. Again, I had to prorate that to the Ramahs on the basis of their proportion of the total Indian population in the State.

Q. What did you base that on?

A. I based that on a report from the Office of Indian Affairs and from the Office of Revenue sharing Indian population statements for the year 1976.

Q. How many Ramahs were you assuming there were?

A. The first indication I had from the Office of Indian Affairs were that there were fourteen hundred Ramahs. I have had higher estimates and I used that particular one to keep the numbers reasonably conservative.

Q. Assuming if there were a larger amount of Ramahs, then your figures would have been higher?

[Tr. 279]

A. That's correct.

Q. Could you please explain what you mean by indirect expenditures?

A. Those are basically expenditures that you simply can't reasonably assign to an individual and some differentiate a basis which somebody else has. How can you say that Joe Blow benefited five hundred by national defense while Jane only benefited two hundred. There has to be some basis to that. we [sic] simply allocate them on a per capita basis.

Q. Is it fair to say that indirect expenditures are then expenditures that are for a common good?

A. Yes.

Q. What indirect expenditures did you feel could be tied into the Ramah Navajo Indian chapter?

A. Well, the most important one of all was highways. Then, in varying amounts, the court system, the public safety system, including the correction institutions, public health and environmental protection. Those were the main ones.

A. Do you recall an approximated figure of what the direct expenditures were for the benfit [sic] of the Ramah Indians?

A. Roughly three hundred thousand dollars.

Q. Did you base your estimate of the amount of

[Tr. 280]

money spent for highways on any particular road or the State highway system in general?

A. No, I didn't, because there are twenty miles of State Road 53 in the area that is being maintained by the Highway Department. It didn't seem to me like that twenty miles of road was really being maintained basically for the Ramahs on the one hand, but on the other hand, it doesn't seem like they benefited any less than any other citizen from driving on all the other miles in the State. So instead of saying okay, we will take the annual budget for that twenty miles and allocating that for the Ramahs, I simply allocated the Highway Department on a per capita basis.

Q. Did you come up with a total estimate of the indirect and direct expenditures by the State of New Mexico on behalf of the Ramah Indians?

A. Well, it would be the three hundred thousand plus ninety thousand. Three hundred ninety thousand.

Q. I have no further questions.

CROSS-EXAMINATION

BY MR. VAN AMBERG:

Q. Mrs. Lindberg, turning to the area of public

[Tr. 281]

education, what was the source of your information regarding your conclusion in that area?

A. I used the annual report of the public school finance division which contains budget and expenditure information on all school districts in the State. As I indicated before, I used the enrollment based on the estimate that Mr. Johnson provided.

Q. Do you have any background or training in the area of education?

A. No.
Q. Or State education in particular?
A. No.
Q. Are you aware whether the school district in which the Gallup-McKinley public high school at Zuni received monies from Johnson O'Malley?
A. Yes.
Q. Do you know how much they received on that?
A. I don't know how much they received on that.
Q. Do you know whether they received money under Public Law 874?
A. Yes, I do.
Q. Do you know how much money they received?
A. I don't remember. That was all available in the report?

[Tr. 282]

Q. In which report?
A. In Public School Finance Division report.
Q. But you didn't include it in your report?
A. No, because I was working on State expenditures only.
Q. But you didn't include any money which the school district received because Indians were going to that school, did you?
A. I used only state funds. It is recognized that there are additional funds, but I didn't use it.
Q. There are additional funds that go to this district because Indians attend them?
A. That's right.
Q. But you did not include them in your report?
A. No.
Q. Are you aware whether the Gallup-McKinley Public High School — What is the name of the school?

A. Gallup-McKinley.

Q. Gallup-McKinley, yes. Do you recall whether they received monies based on Title I?

A. I am sure they did.

Q. Do you know how much?

A. No.

Q. Do you recall if they received monies based on Title VII?

[Tr. 283]

A. I don't know.

Q. Are you familiar with the Indian Basic Education Act?

A. I know there is one.

Q. Do you know what it says and what it provides?

A. No.

Q. Or when it was passed?

A. No.

Q. Is it my understanding that you determined that there were approximately thirty-five Indian students attending the high school out there because of your observations relating to bus route, is that correct?

A. Well, I know there was a bus route, yes, but I didn't base it off the bus route. I inquired directly.

Q. What was the role of the bus route? I don't think I understood your testimony.

A. The presumption was that no other public school district was running a bus route to Ramah for the purpose of busing children to some other school.

Q. And it goes — Actually the bus is at the village of Ramah, isn't that correct?

A. I think it has a whole route through the area.

Q. Do you know what the route is?

[Tr. 284]

A. I don't know.

Q. Do you know whether it goes in the Reservation?

A. Yes, it does.

Q. You don't know where, though?

A. No, I don't.

Q. So this figure of thirty thousand five hundred dollars is just your estimation of the amount of money spent by the State in the school district?

A. For those students, yes.

Q. Allocated to thirty-five students?

A. Yes.

Q. There is nothing contained in your computation which relates to any federal monies which go to the school district because of the attendance of Indians?

A. No. In all cases, I tried very hard to exclude federal funds from these calculations.

Q. Relating to higher education, how did you determine that there were at least three Ramah Indians who were enrolled at the University of New Mexico?

A. The Board of Educational Finance every Fall receives a list from each and every university. They call it their student file and it tells them the number of students by high school of origin enrolled in each university by high school of origin, by schools in New Mexico and for students

[Tr. 285]

outside of New Mexico.

Q. Where was your high school of origin that you used for your study?

A. Ramah.

Q. Ramah only?

A. Yes.

Q. Are you aware that on occasion employees of the Ramah high school district or school board have children that attend the high school there?

A. If there were Anglo or non-Indian children, then I was not able to make that distinction.

Q. So you don't know? All you know is that there are three graduates of the Ramah High School, the Pine Hill School?

A. Yes. I might add that since that school is rather new, there are likely students from other high schools such as Zuni High.

Q. You are unable to determine that?

A. I was unable to determine that. The figures are available from the tribe but they didn't tell me.

Q. Did you ask them for the figures?

A. No.

Q. Did you send them interrogatories?

A. No. I just asked them.

* * * *

[Tr. 287]

* * * *

Q. Are you aware that most Indians, if not all Indians who attend the University of New Mexico are on scholarship in some form or another?

A. I was making that presumption in making the request even, yes.

Q. Either from the BIA or the Navajo Tribal Council?

A. Right.

Q. The Public Defender, did they tell you the number of cases that they handle for Ramah Navajos?

A. No.

Q. Did they tell you how many they won and how many they lost?

A. No.

Q. Did they tell you the number of Ramah clients that they have?

A. No. I did not receive detail on that.

Q. Or the fee per hour that they considered appropriate?

A. No.

Q. Or whether or not in fact they know whether your clients are enrolled members of the Ramah Navajo Chapter?

A. I don't know how the attorneys made the determination.

[Tr. 288]

* * * *

Q. On the public assistance, you said you determined the number of Ramah recipients by examining the names and the zip code, is that correct?

A. That's correct.

Q. What in particular did you determine about the names which would —

A. I'm sorry, I did not discriminate among names. Some of them are obvious. The majority of my impression, which you may want to throw out, was that most of them were Ramahs, going by the name; but the forty-eight cases represents the entire population from that particular zip code.

Q. Do you know what area the zip code covers?

[Tr. 289]

A. Yes. It is the Ramah post office and I am not sure which.

Q. Ramah Village?

A. 87321. It covers more than the village, I believe.

Q. You realize the village is not part of the reservation?

A. Right. I know there are people there. Our estimate is that there are two to three hundred non-Ramahs

in the area, then fourteen hundred Ramahs and subsequently it would be reasonable to reduce that figure by ten, fifteen percent.

Q. Is that reflected in here?

A. No, it is not.

* * * *

[Tr. 290]

* * * *

Q. Similiarly, when you computed the tax rebates, you also used the zip code?

A. Yes. In that case, we did reduce the final amount by fifteen percent.

Q. But you don't know what the legitimate reduction would be? In other words, you don't have the precise figures as to who was Ramah Navajo and who wasn't?

A. No. This was an estimate.

Q. Did you determine at all how much money the State of New Mexico saved by the Ramah Navajo people going out and obtaining federal money and building their own high school and elementary school facilities on the reservation?

A. No. I have made no estimate. You would have to make an incalculable number of assumptions about what we would have spent if we had spent it.

* * * *

[Tr. 291]

* * * *

Q. Relating to your indirect expenditures, have you made any investigation into the actual extent of public safety efforts on the part of the State in relation to the Ramah Navajo?

A. Well, a very large portion of that is actually the

corrections facility and it is difficult to say that the fellow in the penitientiary is the one

[Tr. 292]

who benefits. I think you will have to say that society as a whole is the major beneficiary and that is why it is actually allocated on a per capita basis.

Q. Well, you have got correction facilities in a separate category.

* * * *

[Tr. 293]

* * * *

Q. But when the Ramahs leave the reservation, they are just like anybody else. They pay gross receipt

[Tr. 294]

taxes, income taxes?

A. Yes.

Q. And the corrections facilities, that is basically the penitentiary and society services?

A. And all the others.

* * * *

Q. Mrs. Lindberg, let me show you what has been marked as Plaintiff's Exhibit 47 and ask you if you can identify that?

A. This is a copy of the annual report of the Public School Finance Division.

* * * *

[Tr. 295]

* * * *

Q. Is that basically the document you used in compiling your statistics and opinion relating to public education benefits provided the Ramah Navajo?

A. Yes.

Q. Referring to Plaintiff's Exhibit —

At this point, Your Honor, I would move for the admissibility of Plaintiff's Exhibit 47 into evidence.

MR. RICHARDSON: I have no objection.

THE COURT: There being no objection, Plaintiff's Exhibit 47 is received into evidence.

BY MR. VAN AMBERG:

Q. Referring to Plaintiff's Exhibit 47, Mrs. Lindberg, would you explain to me and the Court exactly to what you referred in compiling your data?

A. Yes. There is a table in here that relates to revenues budgeted for physical [sic. i.e., fiscal]] '78, '79 and I used the figure appearing under the McKinley-Gallup School District right here.

* * * *

[Tr. 296]

Q. Does it show the amount of money received through the Johnson O'Malley Program?

* * * *

Q. What is the figure there?

A. A million, one hundred forty-six thousand.

Q. Referring to C-2, on Page C-2.

A. That's correct.

Q. Do they have the amount of money received for Public Law 874?

A. Yes. That was back on the other table.

Q. It is listed under federal sources.

Q. That is the amount under Public Law 874 Gallup-McKinley?

A. 599,370.

Q. What about Title I? Is there an indication in there

[Tr. 297]

as to how much Title I received?

A. It is not broken out separately, Your Honor. It is included with a variety of other federal projects.

Q. What other projects are included?

A. Migrant workers, SAFA, whatever that is. Title III IV, VI, VII of the elementary and such Secondary Education Act. Do you want them all?

Q. Yes, if you would just say what they are.

A. Okay. Right to Read Title VII, Title VII ESAA, and then some LEAA funds, Adult Basic Education, Zuni Speech Therapist, Title IV, i.e. National Endowment for Humanities, Ute Conservation, Community Development, National Institute of Education Title IX and miscellaneous 1019.

Q. How much for all of that?

A. Two million, five hundred eighty thousand, two hundred ninety-three dollars.

Q. Is there a separate category for Title VII or was that included?

A. I think that was included. That was included.

Q. Are there any other programs for which the Gallup-McKinley School District received federal funds which to your knowledge relate to the fact that Indians are in attendance in schools in that district?

[Tr. 298]

A. I can't tell from this report.

Q. Did you do any further investigation into federal contributions or federal monies that were received by the school district other than what is contained in Plaintiff's Exhibit 47?

A. No.

Q. So to summarize some of these statistics that you cited, there was approximately about nine and one-half million dollars received by the Gallup-McKinley School District?

A. The numbers are there.

Q. They speak for themselves?

A. Yes.

[Tr. 299]

* * * *

Q. Are you familiar with State Road 53?

A. I was on it about ten years ago.

Q. In preparation of your report, did you have occasion to look at the map and determine where exactly State Road 53 went?

A. Yes.

Q. We all know it does, at least in part, travel through part of the Navajo Reservation.

A. Yes.

Q. About two and one-half miles from the turnoff to the Pine Hill Scholl, however, there is a national monument there, isn't there?

A. Yes.

Q. What is that?

A. That is the El Moro. It is there somewhere in

[Tr. 300]

that area.

A. Yes.

Q. Then the road continues past that to the Pine School on to Zuni, right?

A. Right.

Q. Then continues from Zuni on to Arizona?

A. Sure.

Q. So you are not contending that this is a road exclusively for Navajo purposes?

A. Absolutely not. I think I made that point. It would be a silly thing to say.

Q. The road from State Road 53 to Pine Hill School, are you familiar with that road?

A. No, I do not.

Q. That is not maintained by the State Road Department?

A. They didn't say so. The only roads they confessed to was 53.

Q. So you are not maintaining that the State has participated in either the maintenance or construction of the road leading from State Road 53 to Pine Hill School?

A. If they did, I am not aware of it.

* * * *

[Tr. 301]

Q. Your health hospitals and institutions you attribute forty-six thousand two hundred dollars. How did you derive that figure?

A. Well, the first thing I did there was draw a line and say that hospital services are basically provided to the individual and not to society at large. I mean, it is — We wouldn't have a State hospital if everybody didn't benefit, but the major beneficiaries are the people who are actually there. I did not get through all the State institutions. I did check with some. They had nobody that they could identify as a Ramah Indian, so I just took all State hospitals out and allocated none of that to the Ramah Tribe. So basically, you have public health which maybe they get their shots, immunization shots from the APS. Environmental services, I did allocate to them likewise.

[Tr. 302]

* * * *

Q. Are you aware to the extent in which the Navajo or similarly situated Indians actually use any State

supported facilities as opposed to federal supported?

A. I am aware that they use very little.

Q. They actually use less than the non-Indian population?

A. Of course. That is why I made that adjustment.

Q. You have category transportation.

A. That is basically the Highway Department.

Q. To recap, or referring to your summary, you have a figure of thirty-six thousand five hundred dollars, but that does not take into account the amount of federal government money received by the school district?

A. No federal funds have been figured.

* * * *

[Tr. 303]

* * * *

Q. The public defender, that information was basically

[Tr. 304]

an opinion given to you by some member of the Public Defender's Office without any supporting data?

A. I didn't ask for backup.

Q. And the public assistance AFDC, that information was derived by reference to zip codes, primarily, isn't that correct?

A. Yes.

Q. And the same index was used in determining the low income tax rebate, the medical rebate and the 30 30 rebate?

A. That's right. With an adjustment for what I acknowledge as an estimate.

Q. And the balance is the Office of Indian Affairs an

inter-tribal Indian Ceremonial, which is the Gallup ceremonies?

A. Right.

Q. Did you investigate the State's direct participation in funding the Ramah's School operation at Pine Hill?

A. I don't think there are any State funds. Maybe there are. Are there? The only thing that I know, I didn't ask the public schools to get some of the textbook distribution funds; I didn't inquire.

Q. Parochial school get textbook distribution funds?

[Tr. 305]

A. That's right.

Q. Do you know if the Ramah School ever did?

A. I don't know.

Q. Do you know if the State operates at all in the school busing program?

A. Yes. The State funds that particular bus that we keep talking about.

Q. I am talking about the school bus associated with the Pine School.

A. I doubt it, but I couldn't say for sure.

Q. How about the hot lunch program, are there any State funds applied for hot —

A. I think the federal government provides for the meals on Indian schools.

Q. Are you aware about the State providing any funds for any meal programs?

A. No.

* * * *

[Tr. 306]

* * * *

Q. Could you step to the board for a minute, Mrs. Lindberg.

According to your statistics, the State spends seven hundred fifty-two dollars per pupil.

A. I think when you add up transportation and other costs -

Q. Eight hundred seventy-three dollars?

A. Right.

Q. Are you aware of the number of Ramah Navajo Children who attend the school at Pine Hill?

A. No. I think it is in the hundreds, however,

Q. If I were to tell you, as a hypothetical, that it is four hundred and fifty, would you please multiply eight hundred seventy-three dollars times

[Tr. 307]

four hundred and fifty.

A. Three hundred eighty-two thousand eight hundred and fifty.

Q. The State is thereby saved eight hundred seventy-three dollars per student per year, is that correct, by not having to educate them?

A. Yes, you can make that supposition. It depends on how they would spend it and that sort of thing.

Q. If you are using averages?

A. Sure.

Q. So the State is saving somewhere in the neighborhood of three hundred eighty-two thousand dollars by the efforts of the Ramah Navajo people to obtain their own education institutions, is that fair?

A. Yes.

Q. And if the Ramah Navajo people were also to have programs relating to health clinics and CETA programs, housing programs, that would also be a savings to the State, would it not?

A. Well, not CETA and housing because we probably

wouldn't be providing those services.

Q. But health services would be a savings also?

A. Yes, in part, because mostly, of course, medicaid is mostly federally funded.

Q. Going along in the area of your expertise, do you

[Tr. 308]

have any idea how much tax revenue is generated by having an institution such as Ramah bring into the State some two hundred million dollars a year?

A. We have not tried to analyze that.

Q. Do you have any idea just from that figure?

A. I would not want to make an estimate without a real good examination of it.

Q. I have no further questions.

REDIRECT EXAMINATION

BY MR. RICHARDSON:

Q. Mrs. Lindberg, in computing the indirect expense, you were basing it on services which were available to people, is that right?

A. In large measure. Again, things like Los Lunas would be available to an Indian child, just as any other child. But since there were none, I did not try to impute it.

Q. Things that were actually taken advantage of by specifc Indians, then you tried to put that in a direct benefit category?

A. That's right. If I thought it was a direct benefit type of service.

* * * *

[Tr. 309]

* * * *

BY MR. RICHARDSON:

Q. Do you have any way of knowing if people avail themselves of the direct services?

A. The whole objective of creating an indirect category is to say that those are goods we all con sume whether we want to or not. We are all subject to a court system, whether we want to be or not. It was an attempt — Just by living and breathing and being on this earth, there are certain things that we are participants in. That's the general definition of those indirect services. I suppose you could argue that if you aren't actually propelling yourself down a highway in a vehicle, you don't use the highway, and yet that is how we have our goods delivered and all that sort of thing. So it is intended to be that kind of category where you don't exactly avail yourself deliberately of the services.

Q. Directing your attention to State Road 53 which I believe goes through the Ramah Navajo Reservation,

[Tr. 310]

would you explain how you treated the expenditures on State Road 53 in this report?

A. Well, in that report, I simply indicated that there were expenditures, but I ignored on that little chunk of State Road 53, I ignored it for the purpose of evaluating the benefits. I evaluated the highway benefits on a per capita lot system.

Q. So the specific figures that you came up with on State Road 53 are not in this report as a direct benefit?

A. They are not.

Q. In looking in the area of public school finance and institutions of higher education in New Mexico, do you have any idea whether tuition students pay for all of their higher education?

A. Obviously it does not. Last year we had an

appropriation of a hundred twenty million from our funds to all institutions of higher education which was a hundred and twenty million that students weren't picking up through the tuition and fee.

Q. So somebody going to the University on a scholarship is still receiving benefits beyond just what they are paying for out of their tuition?

[Tr. 311]

A. Yes.

Q. These figures that you give, would you swear on a stack of bibles that it is correct to the very dollar amount?

A. Of course not. They are estimates and they are intended to be just that.

Q. When you are allocating in direct benefits, what was the number of Ramahs that you were estimating this allocation on?

A. I based it on fourteen hundred Ramahs which was -my information was, what was the population in '76. Then I also used '76 state-wide population as a state-wide factor.

Q. And if there were twenty thousand Ramahs, your future would be understated, is that correct?

A. I think so, yes.

Q. I don't have any further questions.

* * * *

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation]

Excerpt From Exhibit P-1 Original Ramah Navajo School Board, Articles of Incorporation And Bylaws.

* * * *

ARTICLE II
Objectives & Purposes

SECTION 1. This corporation is formed for the following objectives and purposes, including charitable, benevolent, social and educational purposes, the general nature of which are as follows:

(a) To secure funding, from either private or public sources, for educational and related services including kindergarten, pre-school, elementary, secondary and adult education to be provided for the Ramah Navajo Community and others in and around the Ramah Navajo Area.

(b) To construct, operate, maintain, and dissolve, if necessary, a school system and such physical structures as may be needed for such school system for the Ramah Navajo Community and others in and around the Ramah Navajo Area including kindergarten, pre-school, elementary, secondary and adult education.

(c) To contract with public or private persons, agencies, corporations or other organizations or individuals for the provision of educational and related services to the Ramah Navajo Community and others in and around the Ramah Navajo Area including kindergarten, pre-school, elementary, secondary and adult education.

* * * *

* * * *

Chapter 3

Membership

§300 Voting Members

Each registered adult member of the Ramah Navajo Chapter of the Navajo Tribe of Indians shall be and hereby is to be considered a voting member of this corporation entitled to vote upon all matters requiring the expression of preferences by the corporation's membership. For purposes of this section an adult shall be any member over the age of twenty-one (21).

§301 Non-voting Members

All other members of the Ramah Navajo Chapter of the Navajo Tribe of Indians shall be and hereby are considered non-voting members.

* * * *

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation]

Excerpt From Exhibit P-l(a) Title 10, Navajo Tribal Code § 51

Chapter 1. School Boards

SUBCHAPTER 1. LOCAL COMMUNITY SCHOOL BOARDS

* * * *

Subchapter 1. Local Community School Boards

§ 51. Establishment.

The Chapters of the Navajo Tribe are authorized to establish such Local Navajo Community School Boards as are suitable for their respective areas.

HISTORY

Source. Tribal Council Res. CAU-87-69, § 1, Title I-A, passed Aug. 8, 1969.

Preamble.

CAU-87-69 contained the following preamble:

"Whereas: (1) The Navajo Tribe is committed to the continuous improvement in the quality of education available to the Navajo People, and

"(2) The Navajo People have demonstrated a willingness and a desire to have greater participation in local school affairs, and

"(3) Local School Boards would improve the quality of education on the Navajo Reservation, and

"(4) In the School Year 1967-68, nine out of ten Navajo Area schools had organized and operated local school boards, and an agency school board organization had been created, and

"(5) The Budget and Finance Committee, by Resolution BFMA-22-69, has given local school boards various duties relating to the Navajo Tribe clothing program for school children, and

"(6) There is a need for uniformity in the procedures of these local school boards, and

"(7) The substance of the proposed act was approved by 36 of 39 agency school boards at a meeting at Hunters Point Boarding School in April of 1969."

Adoption of Navajo Tribal Community School Board Act. CAU-87-69, § 1, adopted the proposed Navajo Tribal Community School Board Act, systematizing procedures for establishment, development, and operation of Navajo Community School Boards.

Navajo Education Policy. CAU-87-69, § 2, adopted as the public policy of the Navajo Tribe the statement of aims and objectives of the Navajo Local Community School Board Program as follows:

"NAVAJO EDUCATIONAL GOALS DEVELOPED
BY THE NAVAJO
TRIBAL EDUCATION COMMITTEE

"1. To seek maximum involvement of parents and Tribal leaders in the education program.

"2. To attack the unique problems of Indian students by the provision of unique programs suited to the needs of these students, such as the ESL Program.

"3. To develop a public information program which reflects progress made on a continuing basis.

"4. To endeavor to assist in any way possible so that full utilization can be made of resources, including the Economic Opportunity Act, Public Law 89-10, and other similar programs which can benefit the Indian people."

Cooperation with local chapters. CAU-87-69, § 3, authorized the Education Committee of the Navajo Tribal Council and the Navajo Area, Division of Education to cooperate with the local Chapters to take any steps necessary to implement Navajo Tribal Community School Board Act and the goals expressed in the statement of the goals of the Navajo Tribal Community School Program."

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation]

Excerpt From Exhibit P-12

Congressional Testimony of Chavez Coho and Bertha Lorenzo seeking Funds for Ramah Navajo School

* * * *

At the Hearings before the Senate and House Interior and Related Agencies Subcommittee on Appropriations

WASHINGTON D.C.

April 11, and April 13, 1972

* * * *

We will begin by telling you very briefly how the school came into existence. The State of New Mexico closed the public high school in Ramah, New Mexico. The Ramah parents filed a suit against the State to try to get them to reopen the public high school. They lost that suit. It caused great consternation amongst the Navajo parents when they learned that this meant that their children would be forced to leave home to attend far away federal and parochial schools. They wanted their children nearby so that they could teach and rear their own children.

The Ramah Navajos then decided to create their own school. They elected five of us to incorporate as a school board, and we were instructed to find a way to start our own school.

* * * *

During the past 104 years, we have not seen a school built in our midst. We could not wait for Washington to fulfil their promise in 1968 . . . so we started educating our own children.

The community of Ramah elected us to start something for their children something which will stop this unending cycle of despair. We want to end it now, for the sake of our children and generations to come. This is why we want to see this school grow. . . . to help bring about the kind of education which will develop strong leaders of our people . . Navajos with a strong sense of pride in their Navajo ways, Navajos who can move confidently in all worlds,

Navajos who will become leaders in all fields of endeavor. This is why we work now to see this school continue. This is why we came this day to ask you to fulfil a promise made by Washington to the Navajo people in the Peace Treaty of 1868.

* * * *

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation]

Excerpt From Exhibit P-21 Public Law 92-369, 86 stat. 508 (Interior Appropriations)

* * * *

CONSTRUCTION

For construction, . . . of . . . buildings . . . and other facilities;

* * * *

Provided further, That not to exceed $1,470,000 shall be for assistance to the Rough Rock School on the Navajo Indian Reservation, Arizona; that not to exceed $950,000 shall be for assistance to the Ramah School on the Navajo Indian Reservation, New Mexico;

* * * *

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation, 89, 90]

Excerpt From Exhibit P-26 Senate Report No. 95-276, 95th Congress, 1st Session (1977) (Interior Appropriations)

* * * *

Funds are included for the following non-budgeted items, with the two school projects to be administered by tribal school authorities:

Design of Hopi High School	$ 175,000
Rough Rock Community High School (library, gym and industrial arts building)	3,519,000
Ramah-Havajo [sic, i.e. Navajo] School (instructional media center)	2,062,000
Northern Cheyenne Tribe (repairs and gym)	200,000
Gila River Indian Community (3 wells)	300,000
Coushatta land acquisition, Louisiana	100,000
Barrow gas pipeline design, Alaska	600,000

* * * *

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by Stipulation]

Excerpt From Exhibit P-29 Contract Between School Board and BIA for Construction (Phase I-4-3-74)

No. 1420-0150 Effective Date 4/3/74

Project No. LM75-188

Issued By: Bureau of Indian Affairs
Division of Facilities Engineering
P.O. Box 1248
Albuquerque, New Mexico 87103

Contractor: Ramah Navajo School Board, Inc.
P.O. Box 248
Ramah, New Mexico 87321

This procurement was negotiated pursuant to 41 U.S.C. 252 (x 10) and P.L. 93-120, October 4, 1973 and P.L. 93-245, January 3, 1974

Supplies/services:

Financial assistance to the Ramah Navajo School Board for the construction of school facilities Department of the Interior and Related Agencies Appropriation Act, 1974 (Public Law 93-120), October 4, 1973, Title I, Bureau of Indian Affairs, Construction and Supplemental Appropriations Act. 1974 (Public Law 93-245), January 3, 1974, Chapter IV, Department of the Interior, Bureau of Indian Affairs, Construction.

General Provision - March 1974

* * * *

Name of Contractor: Ramah Navajo School Board, Inc.

(Signatures omitted in printing) **Date Signed April 22, 1974**

* * * *

Paragraph 8(a)(6): The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General, the Secretary of the Interior, and the Contracting Officer, or any of their duly authorized representives, shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal procurement regulation (41-CFR 1-120), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The term 'subcontract', as used in theis paragraph (b) only, excludes (i) purchase orders not exceeding $2,500, and (ii) subcontracts or purchases orders for public utility services at rates established for uniform applicability to the general public.

Paragraph 9: *Inclusion of Provisions in Subcontracts:* The Contractor agrees to incorporate paragraphs 1, 2, and 4 through 9 and subparagraphs (a) through (g) of paragraph

3 of these General Provisions in each and every subcontract entered into, for the purpose of complying with the provisions of this contract and to require each subcontractor to include these paragraphs in each of their subcontracts.

Paragrapah 10: *Furnishing Documents:* The Contractor agrees to funish the Government copies of contracts entered into for architecural and engineering services, construction, equipment, or other purposes related to performance of the provisions of this contract, for the purpose of determining compliance with its terms.

Paragraph 11: *Title to Facilities.* The title to the new school facilities constructed, purchased or otherwise acquired, including equipment, and paid for with funds provided under this contract, shall vest in the Contractor.

Paragraph 13: *Bonds.* The Contractor shall require that any subcontractor for construction of any part of the school facilities be supported by performance and payment bonds, substantially in the form required by the American Institute of Architects, each in the amount of 100% of the contract, under which the Contractor and the United States will be named as beneficiaries.

Paragraph 14: *Subcontracts.* The Contractor may utilze any type of contract form, general conditions, etc., that is suitable for the subcontracts it enters into so long as the requirements of this contract with respect to the inclusion of certain material therein and the other terms of this contract are satisfied.

Paragraph 15: *Payment Provisions.* The Government agrees

to make payment in advance and the Ramah Navajo School Board agrees to accept as full consideration for carrying out the provisions of this contract, payment in the sum of $2,700,000, said payment to be made upon execution of this contract.

Paragraph 16: *Use of Funds.* (a) Funds available under this contract are to be used for assistance to the Contractor in carrying out the purposes described in The Department of the Interior and Related Agencies Appropriation Act, 1974 (Public Law 93-120), Title I, Bureau of Indian Affairs, Construction, and in Supplemental Appropriation Act, 1974 (Public Law 93-245), Chapter IV, Department of the Interior, Bureau of Indian Affairs, Construction. Funds not needed for the purpose contemplated in the Act shall revert to the Government.

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. 78-438(C)
[Tr. 184]
Excerpt from Exhibit P-43 Findings of Fact and Conclusions of Law, District Court of McKinely County, New Mexico, *Ben Jose, et. al. v. Gallup-Mckinley County School Board, et. al.*

IN THE DISTRICT COURT OF McKINLEY COUNTY, STATE OF NEW MEXICO

BEN JOSE, et al,
Plaintiffs
-vs-
No. 12913
GALLUP-McKINLEY COUNTY SCHOOL BOARD, et al,
Defendants.

COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having been tried to the Court without a jury, the Court for its decision makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Of the several named plaintiffs, Juan Martine and Jimmie T. Pinto are: (a) The parents of school age children; (b) they are Navajo Indians; (c) they reside in the Namah [sic] Navajo area; (d) their homes are more than one and a half miles from present McKinley County school bus routes;

(e) their children are residing away from home and attending schools other than as day students in the McKinley County public schools; (f) they desire that their children be transported by public school transportation to attend McKinley County public schools as day students so that they can reside at home while being educated. These facts and circumstances are commonly shared by many other persons.

2. The plaintiffs Jerry, Stanley and Wilma Clara Martine are minor children of the plaintiff Juan Martine. The plaintiffs Della, Stewart, Nettie, Jeanette, Genevieve, Laberta and Austin Pino are the minor children of the plaintiff Jimmie T. Pino. (a) Their ages range from eight to eighteen and all are of school age; (b) all of these children wish to live at home and attend McKinley County public schools and be transported by public school transportation to and from the schools; (c) present school bus routing does not afford these children transportation from their homes to school; (d) they are variously obtaining their education under B.I.A. auspices; (e) they are residing away from home during the periods of school attendance. These facts and circumstances are commonly shared by many other children in the Ramah Navajo area.

3. The Ramah Navajo area, as referred to in this action, includes generally the portion of Valencia County west of the Continental Divide, but specifically Townships 7, 8, 9 and 10 N. R. 16 W. NMPM, and Townships 7, 8, 9 and 10 N. R. 15 W. NMPM, and Townships 8 and 9 of R. 14 W. NMPM, and is within the geographical area of the Grants Municipal School District.

4. The Gallup-McKinley County School Board and its predecessor for twenty years has afforded education in

the Ramah and Zuni schools and bus transportation to the schools for the children of the Ramah Navajo area, and the Grants Municipal School District Board and its predecessor have not afforded them education or transportation for twenty years, excepting a small number from Townships 7 and 8 N. R. 15 and 16 W. NMPM, who are bussed to Fence Lake Elementary School.

5. The Gallup-McKinley County School Board has adopted a policy as to what children in the Ramah Navajo area will be afforded transportation to and education in its schools, this being extended to all those residing within one and a half miles of the established school bus routes and to those who live beyond who can manage to get to the bus routes. This policy has been the basis of an understanding between the Gallup-McKinley County Board and the Bureau of Indian Affairs, with the latter agency providing for the education of the children of families who reside beyond the one and a half mile distance from the bus routes and who do not manage to get their children to the bus route. The B.I.A.'s manner of providing for such children is to place them away from home in dormitories with the children then attending public schools as day students, or to place them as boarding school residents in B.I.A. operated schools.

6. It is physically feasible for school bus routes to be extended and transportation to public schools of McKinley County afforded to the plaintiff children and others similarly situated.

From the foregoing facts the Court as a matter of law concludes:

1. The several plaintiffs as set forth in Findings 1 and 2 have a right to be enforced in common with other persons so numerous as to make it impracticable to bring them

before the Court and may maintain this action pursuant to Rule 23 of the Rules of Civil Procedure.

2. The Gallup-McKinley County School Board is the agency of state government having the responsibility for the education of the plaintiff school children, by virtue of its having extended its area of responsibility beyond its legal area of jurisdiction to include the people of the Ramah Navajo area for many years, and it is now estopped from discontinuing such service.

3. The failure of the Gallup-McKinley County School Board to act to cause the State Transportation Division to afford the plaintiff children transportation and thus a public school education while living at home is arbitrary and discriminatory.

4. The lack of transportation effectively deprives the plaintiff children of the right to a free public school education to which they are entitled under Article XII, Section 1 of the State Constitution, and is also discriminatory so as to deny them the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

5. The Gallup-McKinley County School Board should be enjoined affirmatively to act to cause the extension of routes and means for transportation from their homes to the public schools of McKinley County of plaintiff children and others similar situated, with such action to be taken within a reasonably short time.

Contrary requested findings and conclusions are refused.

/s/ J. FRANK ZINN
District Judge

(Jurat omitted in printing)

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 192]

Excerpt From Exhibit P-46 Ramah Navajo Chapter Resoulution No. M75-70-1A, February 6, 1970 establishing Ramah Navajo School Board.

* * * *

We, the Ramah Navajo Community Chapter Officers, consisting of a President, Vice-President, Secretary and our Chapter Delegate to the Navajo Tribal Council, are authorized to act for the Ramah Navajo Community Chapter; and

WHEREAS, the Ramah Navajo Chapter, a political subdivision of the Navajo Tribe has recognized for many years the need for a local school;

WHEREAS, the Ramah Navajo Chapter has been forced to send Navajo students to distant boarding schools;

WHEREAS, the Ramah Navajo Chapter is unsatified [sic] with educational systems of public schools and BIA boarding schools;

WHEREAS, the parents of the students living within the Ramah Navajo Chapter jurisdiction would like a voice in the education of their children;

NOW, THEREFORE, BE IT RESOLVED, that the Ramah Navajo Chapter forms a school board know [sic] as the Ramah Navajo School Board who will establish a school for the Ramah Navajo community.

BE IT FURTHER RESOLVED, that the Council Delegate and the Navajo Community Chapter Officers are authorized to sign the resolution and to take whatever steps are necessary to reach its goals.

(Signatures and Certification
Omitted in Printing)

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 311,312]

Defendant's Exhibit D-A: Letter of 3-11-74 from Michael P. Gross to Robert A. Dudley concerning Ramah Navajo school construction contract

March 11, 1974

Mr. Robert A. Dudley
Chief,
Facilities Engineering
Bureau of Indian Affairs
Federal Office Bldg. and U.S. Courthouse
P. O. Box 1248
Albuquerque, New Mexico 87103

Re: Ramah Navajo School Project No. LM75-188 W56-169/3040

Contract No. 14-20-0150-1113

Dear Mr. Dudley:

I just wish to thank you and your staff for meeting with us last Friday, March 8, to discuss the contract between Ramah and the Government which is needed for delivery of appropriated construction funds to Ramah.

As I understand it your staff will draft the contract form

and submit it to the Ramah Navajo School Board for approval by late March. If I may, I would like to repeat the understandings about this contract and the school facility which we reached with you:

1. Since Congress appropriated no money for the purpose to the BIA, the bidding phase must be paid for by Ramah from the $2.7 million granted to it. (We assume that if any funds are left over from the Planning and Design contract, above, Ramah may use them to pay for the bidding phase.)

2. During the construction phase the BIA will assist Ramah upon request and upon reasonable reimbursement with techical [sic] resources, e.g., assistance in construction supervision.

3. The Ramah Navajo School Board, Inc. will own the new facility.

4. Although the Federal Government will have no direct interest in the new construction as owner, it will be third party beneficiary to the construction contract between Ramah and the builder. (This is a direct result of the Federal trust reponsibility for the education of Ramah Indian children and the responsibilities conferred through several statutes, e.g., 25 U.S.C. 13.)

5. Upon completion of Contract No. 14-20-0150-1113 by Ramah the Government will certify in writing that the contract has been satisfactorily completed.

We also discussed with you the percentage in square feet of the Program of Requirements for this project which you believed can be constructed with the limited budget of $2.7

million. At this time I would like to ask you to furnish us a written estimate as to this percentage.

Again, let me thank you for your cooperation. I look forward to talking with you again. If you have any questions please let me know.

(Signature omitted in printing)

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 186]

Defendant's Exhibit D-C: New Mexico Department of Education Memorandum and Gallup-McKinley School District reports on Ramah Navajo Reservation school transportation issues (1969)

(SEAL)

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION – EDUCATION BUILDING
SANTA FE - 87503

LEONARD J. DE LAYO SUPERINTENDENT OF PUBLIC INSTRUCTION

CERTIFICATE

I hereby certify that I am the State Transportation Director for the New Mexico State Department of Education; that I am the official custodian of records for the Department of Education's School Transportation Division and that the attached "Report on Special School Bus Transportation Survey Made in the Ramah Navajo Area" dated April 9, 1969, the memorandum to State Board of Education members from C.B. Lemon dated September 9, 1969, and the map of the Ramah Navajo Area are true and correct copies of documents prepared and preserved in the files of the School Transportation Division by employees of that Division as a part of their official duties.

(Signature and jurat omitted in printing)

(S E A L)

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION
CAPITOL BUILDING
SANTA FE
87501

LEONARD J. DE LAYO
SUPERINTENDENT OF PUBLIC INSTRUCTION

M E M O R A N D U M

To; State Board Members

From: C. B. Lemon, Director of Transportation and Coordinator of Administrative Services

Date: September 9, 1969

Enclosed is a copy of a transportation protest by the Gallup-McKinely County Board of Education, and some background material which I have prepared for your information. Copies of the enclosed letter also can be found in your State Board of Education books for the October 2 and 3 board meeting.

P R O T E S T

To The New Mexico State Board of Education:

The Gallup-McKinley County Board of Education

herewith protests the decision of the State Transportation Division of the Department of Education of the State of New Mexico with respect to the application of the Gallup-McKinley County Board of Education on extension of school bus routes and transportation in the Ramah-Navajo Area of McKinley and Valencia Counties, New Mexico, which requests were made purusant to the decree of the District Court of McKinely County, New Mexico, in Cause No. 12,973, [sic] entitled: "Ben Jose, et al., Plaintiffs, vs. Gallup-McKinley School Board, et al., Defendants", as supplemented by letter from the Superintendent of the local Board on June 11, 1969.

The decision of the State Transportation Division is protested on the ground that it is based upon an erroneous conception of certain facts, a misinterpretation of certain established standards for establishment of school bus routes and for the further reason that the refusal to allow additional transportation was based upon cost factors which would violate constitutional rights.

Dated this /25th/ day of August, 1969.

Gallup-McKinley County
Board of
Education

By /s/

Superintendent

(S E A L)

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION
CAPITOL BUILDING
SANTA FE
87501

* * * *

To: State Board of Education Members

From: C. B. Lemon, Director of Transportation and Coordinator
of Administrative Services

Date: September 9, 1969

Subject: Gallup-McKinley County Transportation Protest

On October 17, 1968, I received a letter from Mr. Alex Krivokapich, Director of Special Services for the Gallup-McKinley County Schools, advising me of the action of the District Court in ordering a study, by the Gallup-McKinley Schools, of the school bus routes in the Ramah Navajo area of western Valencia County. Neither the State Board of Education nor the Transportation Division were made a party to this litigation. We received a copy of the court order on March 26, 1969, directing the Gallup-McKinley County Schools to cause the extension of routes and means of transportation in the Ramah Navajo area of Valencia County.

On April 9, 1969, Mr. J. L. Warren of this division, con-

ducted a comprehensive transportation survey of the area. He was accompanied by administrative personnel from both the Gallup and Grants Schools, by an attorney for the DNA, and by Mr. Willard Scott, Director of Indian Education, State Department of Education. In general, the roads were found to be unimproved and precluded the practicability of extending school bus service. All interested parties were so informed.

A letter dated June 11, 1969 from Dr. W. B. FitzSimmons, Gallup Superintendent, was received on June 12, 1969. This letter proposed several extensions of school bus service requiring a number of four-wheel drive feeder vehicles. Mr. Warren analyzed the proposals, and, as there were some questions unanswered, on July 15, 1969, I requested Dr. FitzSimmons to furnish further information. This he did on July 19, 1969.

Consistent with statewide procedures, I denied the four-wheel drive feeders and approved extensions only as recommended in Mr. Warren's survey.

On September 2, 1969, Mr. De Layo received a formal protest of my denial to the State Board of Education. The protest is made consistent with Section 77-4-5.

In a letter dated August 15, 1969, Mr. M. B. McBride, Superintendent of the Grants Municipal Schools, advised me of the action of the Grants Board of Education in assuming the responsibility of educating all the children residing in this area of Valencia County. They have opened an elementary school at the Ramah Chapter House and are transporting the junior and senior high school pupils into Grants.

It appears to me that inasmuch as the Gallup-McKinley County Schools no longer have any responsibility for the education or transportation of the pupils residing in the Ramah Navajo area of Valencia County their protest is no longer a valid one.

Report on Special School Bus Transportation Survey Made in the Ramah Navajo area located southeast of Ramah and includes a small amount of territory in McKinley County and a much more extensive area in Valencia County

Date of Survey: April 9, 1969

Survey Participants: *W. B. FitzSimmons,* Superintendent of the Gallup-McKinley County School System; *Alex Krivokapich,* Director of Special Services for the Gallup-McKinley County School System; *Leslie Clawson,* Principal of the Ramah Elementary School which serves students in grades one through eight—students above this grade level, that is 9-12 are transported to the Zuni High School approximately twenty-four miles west of Ramah; *Bailey Henio,* Custodian at the Ramah Elementary School—this person served as the principal source of information with respect to identity of families as well as location and numbers and grade level of pupils for the different families. Also, his ability to speak the Indian language was very helpful during the survey. *Onesimo Garcia,* Director of Special Services for the Grants Municipal School System; *Michael Gross,* Attorney for the Law Offices of DNA (Dirnebeiina Nahilna Be Agaditahe) at Window Rock, Arizona; *Willard A. Scott,* Director of Indian Education for the New Mexico State Department of Education in Santa Fe, New Mexico; and, *James L. Warren,* Transportation Specialist for the School

Transportation Division of the State Department of Education in Santa Fe, New Mexico.

Purpose of Survey: To comply with Court Order No. 12913 issued by the District Court of McKinley County, State of New Mexico which states in part as follows:

Decree

The Court, having entered in its decision in this case by its findings and conclusions, to implement that decision does decree:

1. The Defendants (Gallup-McKinley County School Board, et al) are directed and affirmatively enjoined to act to cause the State Transportation Division of the Department of Education to approve and allow you to provide free public school transportation to the plaintiff children and other children similarly situated so as to afford them a public school education in the schools of McKinley County while permitting them to live at home.

2. The defendants are further directed to report to the court what steps have been taken by them to carry out the terms of this decree by May 1, 1969.

3. The Court retains jurisdiction of this cause until further order.

Procedure: The School Transportation Division of the State Department of Education submits this report to the Superintendent of the Gallup-McKinley County School System, who according to the court decree is responsible for reporting directly to the court by May 1, 1969. Other members of the survey team requested copies

of this report and are being provided with same. It should be clearly understood that the content of this report represents the interpretations and thinking of the State School Transportation Division and are based on information secured from the field survey, and guidelines previously established by that division, and may not necessarily reflect the opinions of other survey participants.

Findings and Recommendations: buses under jurisdiction of the Gallup-McKinley County School System serve the area under consideration and both routes were checked to clearly establish current operating procedures and circumstances. The two buses travel indentical [sic] routes, however, one transports high school pupils (grades 9-12) to the Zuni High School located approximately twenty-four miles west of Ramah on State Highway -53, and the other bus transports elementary pupils (grades 1-8) to the Ramah Elementary School. The time schedules for the two buses are quite different with the high school bus starting much earlier (about 6:50 a.m.) in the morning in order to arrive in Ramah about 7:50 and Zuni before classes begin at 8:30 a.m. The following is a chart description of the two routes:

(Bus chart omitted in printing)

Regular bus service is available to the Ramah Chapter House; however, a number of families are scattered throughout an area southeast of the Chapter House which is not provided with regular service to public schools at present. An effort was made to investigate this area thoroughly with respect to distances, road conditions, number of families as well as their locations and approximate number of pupils involved. Starting seven tenths of a mile northeast of the Ramah Chapter House, the survey team traveled 47.8

miles generally in the form of a southeastern loop and spent two hours and thirty-four minutes securing as much pertinent information as possible. Some twenty-four families were identified by Bailey Henio and Leslie Clawson, and it is estimated that 75-80 students of all grade levels would be involved. Many families do not live along the main road, but are located up to two or three miles off the road, which appears to eliminate any practical consideration for providing service directly to such residences. Major considerations in determining feasibility of providing additional bus service in this area as well as others may be identified as follows:

1. Road types and conditions.

2. Number of pupils located in patterns that make it possible to establish logical routing.

3. Travel times and distances involved in getting pupils to proper attendance centers.

4. Weather severity and availability of adequate road maintenance equipment.

5. Type and amount of equipment required to perform the service which also relates to cost.

The factors cited above generally are unsatisfactory and unfavorable to such an extent that it is not considered feasible to provide additional bus service except to the following areas or locations.

1. The road northeast of the Ramah Chapter House for a distance of about seven miles is considered to be reasonably suitable for daily school bus operation, except when rain and snow are heavy. At present there are no families who

could be served in this area; however, if families do begin to occupy this area, arrangements should be made to provide regular service.

2. The road southwest of the Ramah Chapter House for about four miles is quite suitable for bus service, but again no families occupy this area at present. Service should be extended into this area when needed.

3. An area five miles southeast of Ramah along highway -53 and 2.3 miles northeast of the highway should be provided with regular service for elementary students immediately or at the beginning of the 1969-70 school year depending on existing bus capacity. According to survey information, there are about 12 elementary pupils among the following families: Beaver, (two Jim families), Garcia, and Frank. High school bus service is not recommended at present for this location because of the long distance (53.8 miles, one way) now being traveled by the high school bus.

4. An area south of Ramah involving the following families: John White (4 pupils), Isabel Jose (3 pupils), Bessie Martine (4 pupils), and Billy Begay (5 pupils), was checked for possible regular service but roads are considered to be inadequate at present.

Summary:

The intent is to show that where conditions and circumstances permit, State Transportation officials are vitally interested in helping local school officials provide regular daily transportation service to all pupils under their jurisdiction. This position is positively reflected in recommendations 1, 2, and 3 of this report.

Locally, indications are that roads will continue to be im-

proved, as they obviously have been for the past several years, which will in turn make it possible to provide additional services. Roads throughout the area can readily be classified as follows:

1. Graded dirt where road beds are built up properly and adequate drainage is provided.

2. Graded dirt without proper road beds and drainage.

3. Dirt trails with no evidence of any maintenance whatsoever, hopefully, gravel or surfacing material could be placed on some of the improved dirt roads in the future, which would tend to make the roads "all-weather," which they are not at present. Another hindrance to daily operation of motor vehicles is the fact that road improvement is somewhat "spotty" or non-continuous. For instance, a good section of roadway may lead immediately into a very bad section of road. Better planning could eliminate many of these unsatisfactory situations.

The court's findings of fact and conclusions of law identify Juan Martinez as one of the plaintiffs. Interestingly enough to all survey participants, and given an explanation of survey purposes; he immediately shook his head in a negative manner and stated that school buses could not operate on a daily basis until roads were improved. He also commented further on bad winter time conditions.

Southwest of the area concerned in this survey, is a large block of territory that is commonly considered to be related to Fence Lake and, in fact, is currently being served by buses transporting pupils to Fence Lake; however, it is also necessary that high school students be

transported from Fence Lake to Zuni. The territories are very similar, but recent road improvement has made it possible to extend and add additional bus service in the Fence Lake area. It seems reasonable to assume that the same thing can and will occur in the Ramah Navajo area. No doubt, availability of funds will determine how fast the improvements are made.

IN THE DISTRICT COURT OF NEW MEXICO, FIRST JUDICIAL DISTRICT

No. CV-78-438

[Tr. 36-38, by stipulation]

Excerpts from Defendant's Exhibit 3 to Motion for Summary Judgement: Bid specifications for phase I Ramah-Lembke school construction contract

* * * *

INVITATION FOR BIDS

You are invited to submit a sealed proposal under a lump sum contract for the construction of the Ramah Navajo School Facility. Bids will be received at the office of Kruger, Lake & Associates by Mr. Chavez Coho, Chairman, Ramah Navajo School Board, Inc., Ramah, New Mexico until 3:00 P.M. (Local Time), Tuesday, July 30, 1974, and then opened and publicly read aloud. Any bid received after closing time will be returned unopened.

Drawings and specifications may be obtained by General, Mechanical and Electrical Contractors upon deposit of $100 for each set from Hirsen, Gammill, Trumbo and Cook,

Architects, 2150 Dwight Way, Berkeley, California 94704, or Kruger, Lake and Associates, Architects and Engineers, Suite 105, 601 San Pedro Dr., NE, Albuquerque, New Mexico 87108. Three (3) sets of plans and specifications will be issued to general contractors. The mechanical and electrical contractors will be issued one (1) set. Additional sets may be had for the cost of printing. All drawings and specifications shall be returned to the above address after bids have been opened, within ten (10) days, in good condition.

A guarantee of five percent (5%) of the amount of the bid will be required with each bid in the form of a bid bond or certified check.

A performance bond and a labor and material payment bond will be required in the amount of one hundre [sic] percent (100%) of the amount of the contract price. The contractor will deliver this bond simultaneously with his delivery of the executed contract.

Bids must be submitted upon the Bid Form furnished with the specifications, and the successful bidder will be required to execute a STandard A.I.A. Form of Agreement Between Owner and Contractor.

The right is reserved, as the interest of the Owner may require, to reject any and all bids, to waive any formality in bids received, and to accept or reject any items of any bid, unless such bid is qualified by specific limitation. The contractor shall hold all bids firm for thirty (30) calendar days after the bids have been opened.

(Signature omitted in printing)

GENERAL REQUIREMENTS

1A - AIA GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

The 1970 Edition of the General Conditions of the Contract for Construction are a part of these specifications to the same extent as if written out in full. Copies of the 1970 Edition of the AIA General Conditions of the Contract for Construction may be obtained from the Office of the Architect-Engineer upon request. Each copy of the contract will contain a copy of the 1970 Edition of the AIA General Conditions of the Contract for Construction.

1B - GUARANTEE

The general contractor shall and hereby does warrant and guarantee all workmanship and materials for a period of one year from date of completion as evidenced by date of Architect-Engineer's final certificate for payment of this contract. All guarantees for a longer period of time required by the work sections of these specifications shall be secured by the general contractor for the sub-contractors and delivered to the Architect-Engineer and are hereby warranted by the general contractor as much as if countersigned by him.

1C - SCOPE OF WORK

The contractor performing this work shall furnish all labor, equipment, tools and materials and pay for all special taxes or permits necessary to complete all work as hereinafter required or as shown or called for on the drawings. He shall provide all the necessary barricades and safety features to protect traffic.

1D - SUPPLEMENT TO GENERAL CONDITIONS, ARTICLE 11, INSURANCE:

The contractor shall procure and maintain during the life of the contract all insurance required under the General Conditions and this heading. In addition to insurance provisions under General Conditions, amendments as set forth below shall also apply:

1. Contractor's Liability Insurance:

a. This insurance shall be written for not less than the following limits of liability:

Bodily Injury	-One Person	$100,000
	-Each Accident or Occurrence	$300,000
Property Damage	-Each Accident	$ 50,000
	Aggregate	$ 50,000

b. All liability insurance required herein shall be under Comprehensive Ceneral and Automobile Bodily Injury and Property Damage form of policy.

Legislature approved December 16, 1936, known as "The New Mexico Unemployment Compensation Law," with all amendments to date, and requirements of his subcontractors to comply with same. All contractors shall comply with all other laws and regulations pertaining to labor and mechanics enacted by Congress of the United States, and the State of New Mexico.

1Y - STATE OF NEW MEXICO SALES AND USE TAX LAW

All contractors on project shall comply with provisions of State of New Mexico Sales and Use Tax Law and all amendments to same and require all of their subcontractors to do likewise.

1Z - OWNER'S FINANCIAL PROVISIONS

The Owner is The Ramah Navajo School Board, Inc., Post Office Box 248, Ramah, New Mexico 87321, a Corporation of New Mexico, and Mr. Chavez P. Coho is the President of the Corporation. This Corporation has a Federal Grant to design the entire school facility and another grant to construct Phase One of this facility.

The General Provisions of the Owner's Financial Assistance are duplicated herein and are hereby made a part of the bidding and contract documents.

Trustee for the construction funds granted to the Owner for this project is the Albuquerque National Bank, which is empowered by the Owner to institute, join in, maintain, defend, compromise, submit to arbitration, or settle any litigation, claim, obligation or controversy with respect to, or in relation to, any matter affecting the Trust Estate, regardless of the manner in which such matters have arisen, all in the name of the Trustee. The Trustee is further empowered by the Owner to make all the payments to the contractor on the project on the basis of the contractor's sworn statements verified by the Architect and approved by the President or Vice-President and Executive Director of the

Owner, any provision of the 1970 Edition of the General Conditions of the Contract for Construction of the AIA notwithstanding.

1AA - WAGE DETERMINATION

The wage rates set forth are the minimum rates which may be paid to the classifications of laborers and mechanics designated therein pursuant to the Davis-Bacon Act (Act of March 3, 1931, as amended; 40 USC 276a and following). The Commission does not represent that said minimum rates do now, nor that they will at any time in the future, prevail in the locality of the work for such laborers or mechanics; nor that such mechanics or laborers are or will be obtainable at said rates for work under this contract; nor that said rates represent the most recent wage determination by the Secretary of Labor with respect to such classifications of laborers or mechanics in the locality of the work. The wage determination decisions and modifications bound at the end of this section shall apply to this project.

1BB - PREFERENCE FOR QUALIFIED LOCAL LABOR

In view of the depressed economy of the Ramah Navajo area, preference for employment for all work under the contract shall be given qualified local labor.